

Senate Bill 131

By: Senators Hamrick of the 30th, Cowser of the 46th, Crosby of the 13th and Tarver of the 22nd

**AS PASSED**

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and  
2 estates, so as to comprehensively revise provisions relating to trusts, charitable trusts,  
3 trustees, and trust investments; to provide a short title; to provide for general provisions  
4 relating to trusts; to provide for the creation and validity of express trusts; to provide for  
5 revocable trusts; to provide for reformation, modification, division, consolidation, and  
6 termination of trusts; to provide for creditors' claims and spendthrift and discretionary  
7 provisions; to provide for testamentary additions to trusts; to provide for implied trusts; to  
8 provide for creation by deed to acquire beneficial interest; to provide for charitable trusts; to  
9 provide for trustees, their appointment, and their compensation; to provide for resignation  
10 and removal; to provide for interim accounting and final accounting; to provide for trustees'  
11 duties and powers, certification of trusts, and registration and deposit of securities; to provide  
12 for trustee liability; to provide for foreign entities and nonresidents acting as trustees; to  
13 provide for trust investments; to enact the "Georgia Principal and Income Act"; to provide  
14 for appointment at the beginning and end of income interest; to provide for allocation of  
15 receipts during administration of trust; to amend Code Section 7-1-242 of the Official Code  
16 of Georgia Annotated, relating to restrictions on corporate fiduciaries, so as to provide that  
17 nonprofit corporations and other entities may lawfully act as a fiduciary; to amend the  
18 Official Code of Georgia Annotated so as to conform provisions to the new Chapter 12 of  
19 Title 53 and correct cross-references; to provide for related matters; to repeal conflicting  
20 laws; and for other purposes.

21 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

22 **SECTION 1.**

23 Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and estates, is  
24 amended by repealing in its entirety Chapter 12, relating to trusts, and enacting a new  
25 Chapter 12 to read as follows:

"CHAPTER 12ARTICLE 153-12-1.

(a) This Act shall be known and may be cited as 'The Revised Georgia Trust Code of 2010.'

(b) Except to the extent it would impair vested rights and except as otherwise provided by law, the provisions contained in this chapter shall apply to any trust regardless of the date such trust was created.

53-12-2.

As used in this chapter, the term:

(1) 'Ascertainable standard' means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the federal Internal Revenue Code of 1986.

(2) 'Beneficiary' means a person for whose benefit property is held in trust, regardless of the nature of the interest, and includes any beneficiary, whether vested or contingent, born or unborn, ascertained or unascertained.

(3) 'Express trust' means a trust as described in Code Section 53-12-20.

(4) 'Foreign entity' means:

(A) Any financial institution whose deposits are federally insured which is organized or existing under the laws of any state of the United States, other than Georgia, or any subsidiary of such financial institution;

(B) Any other corporation organized or existing under the laws of any state of the United States which borders upon this state, specifically, Florida, Alabama, Tennessee, North Carolina, or South Carolina; and

(C) Any federally chartered financial institution whose deposits are federally insured having its principal place of business in any state of the United States, other than Georgia, or any subsidiary of such financial institution.

(5) 'Implied trust ' means a resulting trust as described in Code Section 53-12-130 or a constructive trust as described in Code Section 53-12-132.

(6) 'Nonresident' means an individual who does not reside in Georgia.

(7) 'Person' means an individual, corporation, partnership, association, joint-stock company, business trust, unincorporated organization, limited liability company, or other legal entity, including any of the foregoing acting as a fiduciary.

(8) 'Private foundation' means a private foundation as defined in Section 509 of the federal Internal Revenue Code.

(9) 'Property' means any type of property, whether real or personal, tangible or intangible, legal or equitable.

(10) 'Qualified beneficiary' means a living individual or other existing person who, on the date of determination of beneficiary status:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) of this paragraph terminated on that date without causing the trust to terminate; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(11) 'Settlor' means the person who creates the trust, including a testator in the case of a testamentary trust.

(12) 'Spendthrift provision' means a provision in a trust instrument that prohibits transfers of a beneficiary's interest in the income or principal or both.

(13) 'Trust' means an express trust or an implied trust but shall not include trusts created by statute or the Constitution of Georgia.

(14) 'Trust instrument' means the document, including any testamentary instrument, that contains the trust provisions.

(15) 'Trust property' means property the legal title to which is held by the trustee. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as the designated beneficiary under a policy of insurance, contract, employees' trust, or other arrangement.

(16) 'Trustee' means the person or persons holding legal title to the property in trust.

#### 53-12-3.

Except to the extent that the principles of common law and equity governing trusts are modified by this chapter or another provision of law, those principles remain the law of this state.

#### 53-12-4.

(a) As to real property, the validity of a trust shall be determined by the law of the situs of the real property.

(b) As to all other property, the validity of a trust shall be determined by:

(1) The law of the jurisdiction designated in the trust instrument unless the effect of the designation is contrary to the public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) In the absence of an effective designation in the trust instrument, the law of the jurisdiction having the most significant relationship to the matter at issue.

53-12-5.

The meaning and effect of the trust provisions shall be determined by:

(a) The law of the jurisdiction designated in the trust instrument unless the effect of the designation is contrary to the public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(b) In the absence of an effective designation in the trust instrument, the law of the jurisdiction having the most significant relationship to the matter at issue.

53-12-6.

(a) Trusts are peculiarly subjects of equity jurisdiction. Suits by or against a trustee which sound at law may be filed in a court of law.

(b) Actions concerning the construction, administration, or internal affairs of a trust shall be maintained in superior court except as otherwise provided in Code Section 15-9-127.

(c) Any action by or against the trustee or to which the trustee is a party may be maintained in any court having jurisdiction over the parties and the subject matter except as provided in subsection (b) of this Code section.

53-12-7.

(a) The effect of the provisions of this chapter may be varied by the trust instrument except:

(1) As to any requirements relating to the creation and validity of express trusts as provided in Article 2 of this chapter;

(2) As to the effect of the rules relating to spendthrift trusts as provided in Article 5 of this chapter;

(3) As to the power of the beneficiaries to modify a trustee's compensation as provided in Code Section 53-12-210;

(4) As to the duty of a trustee to administer the trust and to exercise discretionary powers in good faith as provided in Code Sections 53-12-240 and 53-12-260;

(5) As to the effect of a provision relieving a trustee from liability as provided in Code Section 53-12-290; and

(6) As to the periods of limitation on actions as provided in Code Sections 53-12-45 and 53-12-307.

(b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions authorized by the provisions of this chapter.

ARTICLE 253-12-20.

(a) An express trust shall be created or declared in writing and signed by the settlor or an agent for the settlor acting under a power of attorney containing express authorization.

(b) An express trust shall have, ascertainable with reasonable certainty:

(1) An intention by a settlor to create such trust;

(2) Trust property;

(3) Except for charitable trusts, a beneficiary who is reasonably ascertainable at the time of the creation of such trust or reasonably ascertainable within the period of the rule against perpetuities;

(4) A trustee; and

(5) Trustee duties specified in writing or provided by law.

(c) The requirement that a trust have a reasonably ascertainable beneficiary shall be satisfied if under the trust instrument the trustee or some other person has the power to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

53-12-21.

(a) No formal words shall be necessary to create an express trust.

(b) Words otherwise precatory in nature will create a trust only if they are sufficiently imperative to show a settlor's intention to impose enforceable duties on a trustee and if all other elements of an express trust are present.

53-12-22.

(a) A trust may be created for any lawful purpose.

(b) A condition in terrorem shall be void unless there is a direction in the trust instrument as to the disposition of the property if the condition in terrorem is violated, in which event the direction in the trust instrument shall be carried out.

53-12-23.

A person has capacity to create an inter vivos trust to the extent that such person has legal capacity to transfer title to property inter vivos. A person has capacity to create a testamentary trust to the extent that such person has legal capacity to devise or bequeath property by will.

53-12-24.

No trust shall be invalid or terminated and no merger of title to trust property shall occur merely because the trustee or trustees are the same person or persons as the beneficiary or beneficiaries of the trust.

53-12-25.

(a) Transfer of property to a trust shall require a transfer of legal title to the trustee.

(b) For any interest in real property to become trust property in a trust of which any transferor is a trustee, the instrument of conveyance shall additionally be recorded in the appropriate real property records.

53-12-26.

Property may be added to an existing trust from any source in any manner if the addition is not prohibited by the trust instrument and the property is acceptable to the trustee.

53-12-27.

When the construction of an express trust is at issue, the court may hear parol evidence of the circumstances surrounding the settlor at the time of the execution of the trust and parol evidence to explain all ambiguities, both latent and patent.

53-12-28.

(a) A trust may be created to provide for the care of an animal that is alive during the settlor's lifetime. The trust shall terminate upon the death of such animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this Code section may be enforced by a person appointed in the trust instrument or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Upon termination of a trust authorized by this Code section, the trustee shall transfer any unexpended trust property in the following order:

(1) As directed in the trust instrument;

(2) If the trust was created in a nonresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will; and

(3) If no taker is produced by the application of paragraph (1) or (2) of this subsection, to the settlor, if living, and if not, to the settlor's heirs, as determined under Code Section

53-2-1.

ARTICLE 3

53-12-40.

(a) A settlor shall have no power to modify or revoke a trust in the absence of an express reservation of such power.

(b) A power to revoke shall be deemed to include a power to modify, and an unrestricted power to modify shall be deemed to include a power to revoke.

(c) Any revocation or modification of an express trust shall be in writing and signed by the settlor.

53-12-41.

In exercising a power to modify the trust instrument, the settlor shall not enlarge the duties or liabilities of the trustee without the trustee's express consent.

53-12-42.

A trustee shall not be liable for failing to act in accordance with the terms and conditions of an amendment or revocation of a trust of which the trustee had no notice.

53-12-43.

(a) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the trust instrument and the power.

(b) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by the settlor's conservator only as provided in Code Section 29-5-23.

53-12-44.

No trust shall be considered to be revocable merely because the life beneficiary has a reversion in or a power of appointment over assets of the trust or because the life beneficiary's heirs or estate have a remainder interest therein.

53-12-45.

(a) Any judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death shall be commenced within two years of the settlor's death.

(b) Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance with the trust provisions. The trustee shall not be subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent such notification.

(c) A beneficiary of a trust that is determined to have been invalid shall be liable to return any distribution received.

#### ARTICLE 4

53-12-60.

(a) If it is proved by clear and convincing evidence that the trust provisions were affected by a mistake of fact or law, whether in expression or inducement, the court may reform the trust provisions, even if unambiguous, to conform the provisions to the settlor's intention.

(b) A petition for reformation may be filed by the trustee or any beneficiary or, in the case of an unfunded testamentary trust, the personal representative of the settlor's estate.

(c) Notice of a petition for reformation of the trust shall be given to the trustee and all beneficiaries.

53-12-61.

The trust instrument may confer upon a trustee or other person a power to modify the trust.

53-12-62.

(a) The court may:

(1) Modify the administrative or dispositive provisions of a trust if, owing to circumstances not known to or anticipated by the settlor, compliance with the provisions of the trust would defeat or substantially impair the accomplishment of the purposes of such trust;

(2) Modify the administrative provisions of a trust if continuation of the trust under its existing provisions would impair such trust's administration; or

(3) Modify the trust by the appointment of an additional trustee or special fiduciary if the court considers the appointment necessary for the administration of the trust.

(b) A petition for modification may be filed by the trustee or any beneficiary or, in the case of an unfunded testamentary trust, the personal representative of the settlor's estate.



(c) Notice of a petition to modify the trust shall be given to the trustee and all beneficiaries.

(d) The court may modify the trust regardless of whether it contains spendthrift provisions or other similar protective provisions.

(e) An order for modification shall conform as nearly as practicable to the intention of the settlor.

53-12-63.

(a) The court may order the division of a single trust into two or more trusts or the consolidation of two or more trusts into a single trust if the division or consolidation:

(1) Is consistent with the intent of the settlor with regard to any trust to be consolidated or divided;

(2) Would facilitate administration of the trust or trusts; and

(3) Would be in the best interest of all beneficiaries.

(b) A petition for division or consolidation may be filed by the trustee or any beneficiary or, in the case of an unfunded testamentary trust, the personal representative of the settlor's estate.

(c) Notice of a petition to divide or consolidate a trust or trusts shall be given to the trustee and all beneficiaries of each trust.

(d) Subsection (a) of this Code section may apply to one or more trusts created by the same or different trust instruments or by the same or different persons.

(e) Subsection (a) of this Code section shall not limit the right of the trustee acting in accordance with the applicable provisions of the governing trust instrument to divide or consolidate trusts.

53-12-64.

(a) The trust instrument may confer upon a trustee or other person a power to terminate the trust.

(b) The court may terminate a trust and order distribution of the trust property if:

(1) The costs of administration are such that the continuance of the trust, the establishment of the trust if it is to be established, or the distribution from a probate estate would defeat or substantially impair the purposes of the trust;

(2) The purpose of the trust has been fulfilled or become illegal or impossible to fulfill; or

(3) Owing to circumstances not known to or anticipated by the settlor, the continuance of the trust would defeat or substantially impair the accomplishment of the purposes of the trust.

(c) A petition for termination may be filed by the trustee or any beneficiary or, in the case of an unfunded testamentary trust, the personal representative of the settlor's estate.

(d) Notice of a petition to terminate the trust shall be given to the trustee, all beneficiaries, any holder of a power of appointment over the trust property, and such other persons as the court may direct.

(e) The court may terminate the trust regardless of whether it contains spendthrift provisions or other similar protective provisions.

(f) Distribution of the trust property under the order for termination shall be made to or among the current beneficiaries and the vested remainder beneficiaries, or, if there are no vested remainder beneficiaries, among the current beneficiaries and the contingent remainder beneficiaries. The order shall specify the appropriate share, if any, of each current and remainder beneficiary who is to share in the proceeds of the trust so as to conform as nearly as practicable to the intention of the settlor or testator. The order may direct that the interest of a minor beneficiary, or any portion thereof, be converted into qualifying property and distributed to a custodian pursuant to Article 5 of Chapter 5 of Title 44, 'The Georgia Transfers to Minors Act.'

53-12-65.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property either having a total value less than \$50,000.00 or for which the trustee's annual fee for administering the trust is 5 percent or more of the market value of the principal assets of the trust as of the last day of the preceding trust accounting year may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration, provided that in the case of a cemetery trust, notice shall be given to the Attorney General. For purposes of this subsection, the term 'cemetery trust' means a trust the sole purpose of which is to hold and invest property to be used for the maintenance and care of cemetery plots.

(b) The court may modify or terminate a trust or remove a trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this Code section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This Code section shall not apply to an easement for conservation.

(e) This Code section shall not apply to trusts governed by Chapter 14 of Title 10.

ARTICLE 5

53-12-80.

(a) A spendthrift provision shall only be valid if it prohibits both voluntary and involuntary transfers.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, shall be sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest in the manner set forth in this article.

(c) A beneficiary shall not transfer an interest in a trust in violation of a valid spendthrift provision, and, except as otherwise provided in this Code section, a creditor or assignee of the beneficiary shall not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

(d) A spendthrift provision shall not be valid as to the following claims against a beneficiary's right to a current distribution to the extent the distribution would be subject to garnishment under Article 2 of Chapter 4 of Title 18 if the distribution were disposable earnings:

(1) Alimony or child support;

(2) Taxes or other governmental claims;

(3) Tort judgments;

(4) Judgments or orders for restitution as a result of a criminal conviction of the beneficiary; or

(5) Judgments for necessities.

The ability of a creditor or assignee to reach a beneficiary's interest under this subsection shall not apply to the extent that it would disqualify the trust as a special needs trust established pursuant to 42 U.S.C. Sections 1396p(d)(4)(A) or 1396p(d)(4)(C).

(e) A provision in a trust instrument that a beneficiary's interest shall terminate or become discretionary upon an attempt by the beneficiary to transfer it, an attempt by the beneficiary's creditors to reach it, or upon the bankruptcy or receivership of the beneficiary shall be valid except to the extent of the proportion of trust property attributable to such beneficiary's contribution.

(f) If a beneficiary is also a contributor to the trust, a spendthrift provision shall not be valid as to such beneficiary to the extent of the proportion of trust property attributable to such beneficiary's contribution. This subsection shall not apply to a special needs trust established pursuant to 42 U.S.C. Sections 1396p(d)(4)(A) or 1396p(d)(4)(C).

(g) Notwithstanding any other provision in this Code section, a spendthrift provision in a pension or retirement arrangement described in sections 401, 403, 404, 408, 408A, 409, 414, or 457 of the federal Internal Revenue Code of 1986 shall be valid with reference to

the entire interest of the beneficiary in the income, principal or both, even if the beneficiary is also a contributor of trust property, except where a claim is made pursuant to a qualified domestic relations order as defined in 26 U.S.C. Section 414(p).

53-12-81.

A transferee or creditor of a beneficiary shall not compel the trustee to pay any amount that is payable only in the trustee's discretion regardless of whether the trustee is also a beneficiary. This Code section shall not apply to the extent of the proportion of trust property attributable to the beneficiary's contribution.

53-12-82.

Whether or not the trust instrument contains a spendthrift provision, the following rules shall apply:

(1) During the lifetime of the settlor, the property of a revocable trust shall be subject to claims of the settlor's creditors;

(2) With respect to an irrevocable trust, creditors or assignees of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit during the settlor's life or that could have been distributed to or for the settlor's benefit immediately prior to the settlor's death. If a trust has more than one settlor, the amount the creditors or assignees of a particular settlor may reach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities shall be paid, the property of a trust that was revocable at the settlor's death or had become irrevocable as a result of the settlor's incapacity shall be subject to claims of the settlor's creditors to the extent the probate estate is inadequate. Payments that would not be subject to the claims of the settlor's creditors if made by way of beneficiary designation to persons other than the settlor's estate shall not be made subject to such claims by virtue of this Code section unless otherwise provided in the trust instrument.

53-12-83.

The holder of a power of withdrawal, during the period that the power may be exercised, shall be treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power. The lapse, release, or waiver of a power of withdrawal shall not cause the holder to be treated as a settlor of the trust.

ARTICLE 6

Part 1

53-12-100.

This part shall be known and may be cited as the 'Georgia Testamentary Additions to Trusts Act.'

53-12-101.

(a) A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, even if the settlor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its provisions are set forth in a written trust instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust and notwithstanding the requirements of paragraph (2) of subsection (b) of Code Section 53-12-20. The devise or bequest shall not be invalid because the trust is amendable or revocable or both or because the trust was amended after the execution of the will or after the death of the testator.

(b) Unless the testator's will provides otherwise, the property so devised or bequeathed:

(1) Shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is devised or bequeathed; and

(2) Shall be administered and disposed of in accordance with the provisions of the trust instrument or will setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse.

53-12-102.

The trustee of a trust established by the testator or others as provided in Code Section 53-12-101 shall not be required to inquire into or audit the actions of the executor of the testator's estate or to make any claim against the executor unless specifically directed to do so by the settlor in the trust instrument. In the event that the trustee is authorized or directed by the settlor in the trust instrument to pay or advance any part or all of the trust property to the executor of the testator's estate for the payment of debts, taxes, and expenses of administration of the testator's estate, the trustee shall not be liable for the

application of the trust property so paid or advanced and shall not be liable for any act done or omitted to be done by the executor with regard to the trust property.

53-12-103.

This part shall apply to all devises or bequests made in the will of a testator dying on or after May 31, 1968, whether the will is executed before or after such date. This part shall not invalidate a devise or bequest to a trustee made by a will executed prior to May 31, 1968, by a testator dying prior to such date.

## Part 2

53-12-120.

A trust under a testator's will may be designated as the beneficiary of the testator's qualified retirement plan, individual retirement account, other retirement plan, or life insurance policies on the life of the testator so long as the testator's will is admitted to probate in solemn form, whether the designation occurs before or after the execution of the will. Unless the beneficiary designation provides otherwise, the designation of a trust under a will as beneficiary shall not be treated as the designation of the testator's estate as beneficiary nor shall such property, once delivered to the trustee under the testator's will, be deemed to be part of the testator's estate.

## ARTICLE 7

53-12-130.

A resulting trust is a trust implied for the benefit of the settlor or the settlor's successors in interest when it is determined that the settlor did not intend that the holder of the legal title to the trust property also should have the beneficial interest in the property under any of the following circumstances:

(1) A trust is created but fails, in whole or in part, for any reason;

(2) A trust is fully performed without exhausting all the trust property; or

(3) A purchase money resulting trust as defined in subsection (a) of Code Section 53-12-131 is established.

53-12-131.

(a) A purchase money resulting trust is a resulting trust implied for the benefit of the person paying consideration for the transfer to another person of legal title to real or personal property.

(b) Except as provided in subsection (c) of this Code section, the payment of consideration as provided in subsection (a) of this Code section shall create a presumption in favor of a resulting trust, but such presumption shall be rebuttable by a preponderance of the evidence.

(c) If the payor of consideration and transferee of the property as provided in subsection (a) of this Code section are husband and wife, parent and child, or siblings, a gift shall be presumed, but such presumption shall be rebuttable by clear and convincing evidence.

53-12-132.

(a) A constructive trust is a trust implied whenever the circumstances are such that the person holding legal title to property, either from fraud or otherwise, cannot enjoy the beneficial interest in the property without violating some established principle of equity.

(b) The person claiming the beneficial interest in the property may be found to have waived the right to a constructive trust by subsequent ratification or long acquiescence.

53-12-133.

In all cases in which a trust is sought to be implied, the court may hear parol evidence of the nature of the transaction, the circumstances, and the conduct of the parties, either to imply or rebut the trust.

## ARTICLE 8

53-12-150.

As used in this article, the term:

(1) 'Deed' means and includes any written agreement, declaration of trust, or other instrument which creates a trust estate in the trustee named therein and sets forth the terms and conditions of the trust and which indicates an intention, either expressly or by implication, that the trust estate created therein should be subject to this chapter, but such term shall not include a warranty deed, quitclaim deed, bill of sale, or other instrument that conveys title to property to a trustee merely by virtue of such fact alone.

(2) 'Property' includes improved or unimproved property, real or personal, leaseholds, mortgages, notes, other obligations secured by property or any interest therein, or other interests in such property.

53-12-151.

The owners of property located in this state or persons desiring to acquire beneficial ownership of such property may create by deed an estate therein and in the improvements

made thereon and in the property to be acquired, for the benefit of themselves and such other persons, whether sui juris or not, who may contribute to the improvement or development or acquisition of the property and their assigns or transferees, provided that the deed creating the estate shall provide for the improvement or development of the property covered thereby or for the acquisition of the property and the trustee therein named, and his or her successor shall have some active duty to perform in and about the trust property or the management or control of the same. The deed creating the estate shall be recorded as provided in Code Section 53-12-152. When such an estate is created, the legal title to the property and all the property added thereto or substituted therefor shall vest and remain in the trustee named and his or her successor, in accordance with the terms of the deed, with all the powers conferred thereby upon the trustee, and shall not during the continuance of the estate pass to or vest in the beneficiaries. At the end of 25 years from the date of the deed creating the estate, the title to such of the property as may then belong to the estate shall vest in the beneficiaries; and, if the deed creating the estate so provides, a renewal of the estate may be made at the end of the 25 years, upon the terms and conditions and in the manner therein set forth, for a like period; provided, however, that in the alternative to the period of 25 years and the renewal thereof, if the deed so provides, the estate may be created for any period of time specified therein which does not extend beyond any number of lives in being and 21 years thereafter.

53-12-152.

(a) The deed creating a trust estate as provided in Code Section 53-12-151 shall, within 30 days of the execution thereof, be filed by the trustee in the office of the clerk of the superior court of the county in which the principal office of the trust is located. The trustee shall concurrently pay to the clerk the fee prescribed in Code Section 15-6-77. Upon the deed being filed with the clerk and the fees being paid, the clerk shall deliver to the trustee or his or her attorney two certified copies of the deed, the filing of the clerk thereon, and a receipt for the costs which have been paid to the clerk.

(b) Upon receiving the two certified copies of the deed, the trustee or his or her attorney shall present the same to the Secretary of State and shall pay \$5.00 to the Secretary of State. The Secretary of State shall thereupon attach to one of the certified copies of the deed a certificate in substantially the following form:

STATE OF GEORGIA

OFFICE OF THE SECRETARY OF STATE

This is to certify that a copy of the attached certified copy of a deed, declaration, or agreement of trust dated \_\_\_\_\_, by and between \_\_\_\_\_ as settlor(s) and \_\_\_\_\_ as



trustee(s), which states that the trustee(s) may use the name of \_\_\_\_\_, has been duly filed in the office of the Secretary of State and the fees paid therefor, as provided by law.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Secretary of State

(c) The certified copy of the deed, together with the certificate of the Secretary of State thereon, shall be received as evidence in any court or proceeding as evidence of the existence of the trust and of its nature, terms, and conditions.

(d) The Secretary of State, at any time, upon the request of any person, shall make and certify additional copies of the deed, filing of the clerk, and certificate of the Secretary of State, upon payment to him or her of a fee of \$1.00, plus 10¢ per 100 words for copying, and the additional certified copies shall be likewise admitted in evidence with like force and effect.

(e) Any amendment of a deed shall be filed with the clerk of the superior court and the Secretary of State in the same manner and under the same conditions required in the filing of the original deed, and the fees payable upon the filing shall be computed as if the filing were of an original deed.

53-12-153.

If the deed creating a trust estate under Code Section 53-12-151 so provides, the trustee may conduct and transact the affairs of the trust estate under a business or trade name, which name shall be set forth in the deed. The name may include the word 'trust' but shall not include the words 'trust company.'

53-12-154.

When an estate is created pursuant to Code Section 53-12-151 and from time to time thereafter, the trustee shall issue such certificates of beneficial interest as may be provided for by the deed to the persons who are beneficially interested in the estate or who become so interested therein in accordance with the provisions of the deed. The certificates shall pass and be transferred as personalty and in the same manner as shares of stock in corporations and shall be subject to levy and sale under attachment or execution or any other process in like manner as shares of stock. The trustee or person in charge of the estate representing the trustee shall be subject to the same demand as that provided by Code Sections 9-13-58 and 11-8-112 for the levying officer to make upon the officers of a corporation. Persons having claims against the estate may enforce the same by action

against the trustee thereof in like manner as actions against corporations, and service thereof may be perfected by serving the trustee, if a resident of this state, and if not, then by publication. The venue of such actions shall be the same as that of similar actions against private corporations, but neither the trustee nor the beneficiaries of the estate shall be personally or individually liable therefor except in cases where officers and stockholders of private corporations would be liable under the law.

53-12-155.

The trustee of a trust created under Code Section 53-12-151 shall have sole and exclusive management and control of the property, in accordance with the terms of the deed creating the estate. The exercise by the trustee of any power granted or conferred by the deed, including the power to lease, encumber, and sell, when exercised in accordance with the terms thereof, shall be as valid and effective to all intents and purposes as if the trustee was the sole and exclusive owner of the property in his or her own right. The trustee may resign or be removed and his or her successor may be appointed in the manner of and in accordance with the terms fixed by the deed creating the estate. The same rights, powers, and title over and to the property shall belong to and be vested in the new trustee as are conferred upon the original trustee by the deed creating the estate. The death of a trustee shall not operate to cast title upon his or her heirs, devisees, executors, or administrators, but the same shall vest in his or her successor, when appointed.

53-12-156.

In addition to investments in any property, the trustee of a trust created under Code Section 53-12-151 may invest any funds of the trust estate in investments authorized by trustees under the laws of this state; provided, however, that the deed creating the estate may further limit or expand the powers and authority of the trustee with respect to investments, including the power to invest in property located outside this state. The trustee shall be authorized and empowered, in accordance with the terms of the deed creating the estate, from corpus or from income or from both, to repurchase or redeem any issued and outstanding certificates of beneficial interest.

53-12-157.

Each trust created pursuant to this article shall make a return to the Secretary of State, upon the creation of the trust and annually thereafter, in the same manner and embracing the same information, insofar as applicable, as returns by corporations which are required to be made under Articles 1 and 16 of Chapter 2 of Title 14, including the provisions with

591 regard to fees, penalty for noncompliance, and recording and certifying of copies of the  
592 returns.

593 53-12-158.

594 Upon the termination of the estate created under Code Section 53-12-151, the legal title to  
595 all the property belonging to the estate which is then undisposed of shall pass to and vest  
596 in the persons who are, at that time, the beneficiaries of the estate, in shares corresponding  
597 to their respective interest as beneficiaries.

598 53-12-159.

599 (a) Any trust created pursuant to this article may be merged into a domestic corporation  
600 for profit organized under the laws of this state and subject to Title 14 if the deed creating  
601 the trust expressly authorizes the merger.

602 (b) With respect to the required procedure for the merger and the rights of dissenting  
603 shareholders:

604 (1) The trust shall comply with any applicable provisions of the deed creating the trust  
605 and with the following Code sections, as if the trust were a domestic corporation:

606 (A) Subsection (b) of Code Section 14-2-1103, as if the trustee of the trust were a  
607 board of directors of a domestic corporation;

608 (B) Subsections (c) through (i) of Code Section 14-2-1103 and Code Sections  
609 14-2-1301 through 14-2-1332, as if the holders of certificates of beneficial interest in  
610 the trust were shareholders of a domestic corporation; and

611 (C) Code Sections 14-2-1105 and 14-2-1105.1; and

612 (2) The domestic corporation into which the trust is merged shall comply with the  
613 provisions of Title 14, relating to the merger of domestic corporations, in the same  
614 manner as if the trust being merged into it were a domestic corporation.

615 (c) Upon compliance with the requirements of this Code section and the filing of articles  
616 of merger providing for a merger of the trust into a domestic corporation in the manner  
617 provided in Code Sections 14-2-1105 and 14-2-1105.1, the Secretary of State shall treat the  
618 merger as if it were a merger of corporations under Code Sections 14-2-1105 and  
619 14-2-1105.1.

620 (d) If the Secretary of State issues a certificate of merger, the merger shall become  
621 effective as of the time of delivery to the Secretary of State of the articles of merger so  
622 certified, as provided in Code Section 14-2-1105, or at such later time and date as the  
623 articles specify, not to exceed 60 days from the date of delivery of the articles to the  
624 Secretary of State. When the merger has become effective:

625 (1) The trust and the domestic corporation into which the trust is merged shall be a single  
626 domestic corporation;

627 (2) The separate existence of the trust shall cease;

628 (3) The domestic corporation shall continue to have all the rights, privileges, immunities,  
629 and powers and shall be subject to all the duties and liabilities of a corporation organized  
630 under Title 14;

631 (4) The domestic corporation shall possess all the rights, privileges, immunities, and  
632 franchises, of a public as well as of a private nature, of the trust; and all property, real,  
633 personal, and mixed, all debts due on whatever account, including subscriptions to shares,  
634 all other choses in action, and all and every other interest of or belonging to or due to the  
635 trust shall be taken and deemed to be transferred to and vested in the domestic  
636 corporation without further act or deed; and the title to any real property or any interest  
637 therein vested in the trust shall not revert or be in any way impaired by reason of the  
638 merger;

639 (5) The domestic corporation shall be responsible and liable for all the liabilities and  
640 obligations of the trust. Any claim existing or action or proceeding pending by or against  
641 the trust may be prosecuted as if the merger had not taken place, or the domestic  
642 corporation may be substituted in its place. Neither the rights of creditors nor any liens  
643 upon the property of the trust shall be impaired by the merger; and

644 (6) The articles of incorporation of the domestic corporation shall be deemed to be  
645 amended to the extent, if any, that changes in its articles of incorporation are stated in the  
646 plan of merger.

## 647 ARTICLE 9

648 53-12-170.

649 (a) A charitable trust is a trust in which the settlor provides that the trust property shall be  
650 used for charitable purposes.

651 (b) Charitable purposes shall include:

652 (1) The relief of poverty;

653 (2) The advancement of education;

654 (3) The advancement of ethics and religion;

655 (4) The advancement of health;

656 (5) The advancement of science and the arts and humanities;

657 (6) The protection and preservation of the environment;

658 (7) The improvement, maintenance, or repair of cemeteries, other places of disposition  
659 of human remains, and memorials;

660 (8) The prevention of cruelty to animals;

661 (9) Governmental purposes; and

(10) Other similar subjects having for their object the relief of human suffering or the promotion of human civilization.

(c) If the settlor provides for both charitable and noncharitable purposes, the provisions relating to the charitable purposes shall be governed by this article.

53-12-171.

The settlor of a charitable trust may retain the power to select the charitable purposes or charitable beneficiaries, or may grant the trustee or any other person the power to select charitable purposes or charitable beneficiaries or to engage in the charitable purposes, without rendering the trust void for indefiniteness.

53-12-172.

If a charitable trust or gift cannot be executed in the manner provided by the settlor or donor, the superior court shall exercise equitable powers in such a way as will as nearly as possible effectuate the intention of the settlor or donor.

53-12-173.

A charitable trust shall be valid even though under the trust provisions it is to continue for an indefinite or unlimited period.

53-12-174.

In all cases in which the rights of beneficiaries under a charitable trust are involved, the Attorney General or the district attorney of the circuit in which the major portion of trust property lies shall represent the interests of the beneficiaries and the interests of this state as parens patriae in all legal matters pertaining to the administration and disposition of such trust. The Attorney General or the district attorney may bring or defend actions, and, insofar as an action of this nature may be deemed an action against the state, the state expressly gives its consent thereto. The venue of such actions may be in any county in this state in which a substantial number of persons who are the beneficiaries of the trust reside. Process shall be directed to the Attorney General or to the district attorney of the circuit in which the major portion of the trust property lies. Service may be perfected by mailing a copy of the petition and process by the clerk of the superior court of the county in which it is filed to the Attorney General or to the district attorney of the circuit in which the major portion of the trust property lies. Any judgment determining rights under any charitable trusts shall be binding on the beneficiaries if the Attorney General or the district attorney of the circuit in which the major portion of the trust property lies is a party and is served as provided in this Code section.

695 53-12-175.

696 The settlor of a charitable trust may maintain a civil action to enforce the trust.

697 ARTICLE 10

698 Part 1

699 53-12-180.

700 Notwithstanding any provision therein to the contrary and except as provided in Code  
701 Section 53-12-181, the articles of incorporation of any corporation which is a private  
702 foundation shall be amended automatically as of the later of the date of incorporation or  
703 January 1, 1972, to provide that the corporation shall:

704 (1) Not engage in any act of self-dealing, as defined in Section 4941(d) of the federal  
705 Internal Revenue Code, which would give rise to any liability for the tax imposed by  
706 Section 4941 of the federal Internal Revenue Code;

707 (2) Not retain any excess business holdings, as defined in Section 4943(c) of the federal  
708 Internal Revenue Code, which would give rise to any liability for the tax imposed by  
709 Section 4943 of the federal Internal Revenue Code;

710 (3) Not make any investments which would jeopardize the carrying out of any of the  
711 exempt purposes of the corporation, within the meaning of Section 4944 of the federal  
712 Internal Revenue Code, so as to give rise to any liability for the tax imposed by Section  
713 4944 of the federal Internal Revenue Code;

714 (4) Not make any taxable expenditures, as defined in Section 4945(d) of the federal  
715 Internal Revenue Code, which would give rise to any liability for the tax imposed by  
716 Section 4945 of the federal Internal Revenue Code; and

717 (5) Distribute for the purpose specified in its articles of incorporation for each taxable  
718 year amounts at least sufficient to avoid any liability for the tax imposed by Section 4942  
719 of the federal Internal Revenue Code.

720 53-112-181.

721 Any corporation which is a private foundation may amend its articles of incorporation  
722 expressly to exclude the application of Code Section 53-12-180 or any portion thereof in  
723 the manner provided by Article 10 of Chapter 2 of Title 14 or Article 8 of Chapter 3 of  
724 Title 14, whichever is applicable.

53-12-182.

Nothing contained in Code Sections 53-12-180 and 53-12-181 shall cause or be construed to cause a forfeiture or reversion of any of the property of a corporation which is subject to such Code sections.

53-12-183.

With respect to property held by a corporation which is a private foundation and which is subject to conditions which permit distributions to the extent of the net income of the property each year but do not permit distributions of the property or any part thereof itself, the directors of the corporation may elect to distribute so much of the property as may be necessary to enable the corporation to avoid liability for any tax imposed by Section 4942 of the federal Internal Revenue Code in the same manner as if the corporation were a trust described in Code Section 53-12-193 and the property were the only property held in the trust and as if the directors were the trustees of the trust.

53-12-184.

Nothing in Code Sections 53-12-180 through 53-12-183 shall impair the rights and powers of the courts or the Attorney General of this state with respect to any corporation.

## Part 2

53-12-190.

Notwithstanding any provision therein to the contrary and except as provided in Code Section 53-12-192, the governing trust instrument of any trust which is a private foundation a charitable trust, as defined in Section 4947(a)(1) of the federal Internal Revenue Code, or a split-interest trust, as defined in Section 4947(a)(2) of the federal Internal Revenue Code, shall be amended automatically as of the later of the inception of the trust or January 1, 1972, to include provisions which prohibit the trustees of the trust from:

(1) Engaging in any act of self-dealing, as defined in Section 4941(d) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4941 of the federal Internal Revenue Code;

(2) Retaining any excess business holdings, as defined in Section 4943(c) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4943 of the federal Internal Revenue Code;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of the federal Internal

Revenue Code, so as to give rise to any liability for the tax imposed by Section 4944 of the federal Internal Revenue Code; and

(4) Making any taxable expenditures, as defined in Section 4945(d) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4945 of the federal Internal Revenue Code;

provided, however, that in the case of a split-interest trust, as defined in Section 4947(a)(2) of the federal Internal Revenue Code, paragraphs (1) through (4) of this Code section shall apply only to the extent required by Section 4947 of the federal Internal Revenue Code.

53-12-191.

Notwithstanding any provision therein to the contrary and except as provided in Code Section 53-12-192, the governing trust instrument of any trust which is a private foundation or which is a charitable trust, as defined in Section 4947(a)(1) of the federal Internal Revenue Code, shall be amended automatically as of the later of the inception of the trust or January 1, 1972, to include a provision which requires the trustees to distribute, for the purposes specified in the governing trust instrument, for each taxable year, amounts at least sufficient to avoid any liability for the tax imposed by Section 4942 of the federal Internal Revenue Code.

53-12-192.

The trustees of any trust which is a private foundation, a charitable trust, as defined in Section 4947(a)(1) of the federal Internal Revenue Code, or a split-interest trust, as defined in Section 4947(a)(2) of the federal Internal Revenue Code, may, without judicial proceedings, amend the governing trust instrument of the trust expressly to exclude the application of Code Section 53-12-190 or 53-12-191, or both, by executing a written amendment to the trust and filing a duplicate original of the amendment with the Attorney General of this state, whereupon the Code section or Code sections, as the case may be, shall not apply to the trust.

53-12-193.

(a) With respect to any trust which is a private foundation or a charitable trust, as defined in Section 4947(a)(1) of the federal Internal Revenue Code, the governing trust instrument of which permits distributions to the extent of the net income of the trust each year but does not permit distributions from trust principal, the trustees of the trust may elect, without judicial proceedings and notwithstanding any provision to the contrary contained in the governing trust instrument of the trust, to distribute in any year, for the purposes specified in the governing trust instrument, that amount from the principal of the trust which, when



added to the income of the trust available for distribution during such year, will enable the trust to avoid any liability for the tax imposed by Section 4942 of the federal Internal Revenue Code by filing a written election, which may be a continuing one, with the Attorney General of this state to have this Code section and Code Section 53-12-183 apply to the trust. A distribution from trust principal pursuant to the election shall only be in the form of cash or securities which are either listed or admitted to unlisted trading privileges upon any stock exchange or are quoted regularly in any newspaper having a general circulation in this state.

(b) Any election made under subsection (a) of this Code section may be revoked at any time by filing written notice of revocation with the Attorney General of this state.

53-12-194.

Nothing contained in Code Sections 53-12-190 through 53-12-193 shall cause or be construed to cause a forfeiture or reversion of any of the property of a trust which is subject to such Code sections or to make the purposes of such trust impossible of accomplishment.

53-12-195.

Nothing in Code Sections 53-12-190 through 53-12-193 shall impair the rights and powers of the courts or the Attorney General of this state with respect to any trust.

## ARTICLE 11

### Part 1

53-12-200.

A trustee shall have legal capacity under Georgia law to acquire, hold, and transfer title to property. An individual shall be eligible to serve as a trustee regardless of citizenship or residency. If the trustee is a corporation, partnership, or other entity, it shall be required to have the power to act as a trustee in Georgia.

53-12-201.

(a) A settlor may appoint trustees or grant that power to others, including trust beneficiaries.

(b) A trust shall never fail for want of a trustee.

(c) If the trust instrument names a person to fill a vacancy or provides a method of appointing a trustee, any vacancy shall be filled or appointment made as provided in the trust instrument.

(d) If all the qualified beneficiaries are sui juris, or if some of the qualified beneficiaries are not sui juris but all have a guardian or conservator, the qualified beneficiaries may appoint a trustee by unanimous consent. For purposes of this paragraph a parent may represent and bind such parent's minor or unborn child if a conservator or guardian for the child has not been appointed and there is no conflict of interest between the parent and the child with respect to the appointment of a trustee.

(e) In all other cases, the court, on petition of an interested person, may appoint any number of trustees consistent with the intention of the settlor and the interests of the beneficiaries.

(f) The petition provided for in subsection (e) of this Code section shall be served upon all qualified beneficiaries or their guardians or conservators. The court shall appoint a guardian ad litem for each beneficiary who is not sui juris and who has no guardian or conservator, and service of notice of the petition shall be made on such guardian ad litem.

(g) A trustee appointed as a successor trustee shall have all the authority of the original trustee.

53-12-202.

(a) The acceptance of a trust shall be necessary to constitute a person as trustee. Acceptance may be effected by acts as well as words. After acceptance, the trustee shall not decline the trusteeship.

(b) Except as otherwise provided in subsection (c) of this Code section, a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the trust instrument; or

(2) If the trust instrument does not provide a method or the method provided in the trust instrument is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may act to preserve the trust property if, as soon as practicable, the person rejects or declines the trusteeship.

53-12-203.

(a) A trustee shall not be required to give a bond to secure performance of the trustee's duties unless:

(1) The trust instrument requires a bond; or

(2) A bond is found by the court to be necessary to protect the interests of beneficiaries or creditors of the trust, even though the trust instrument waives the requirement of a bond.

(b) Even though a bond has been required pursuant to subsection (a) of this Code section or the trust instrument requires a bond, the court may excuse the requirement, reduce or increase the amount of a bond, release a surety, or permit the substitution of another bond with the same or different sureties.

(c) The cost of any bond shall be charged against the trust.

(d) If a bond is required, the bond shall be:

(1) Secured by an individual who is a domiciliary of this state or by a licensed commercial surety authorized to transact business in this state;

(2) Payable to the court for the benefit of interested persons as their interests may appear;

(3) Conditioned upon the faithful discharge of the trustee's duties; and

(4) If imposed by the court, in an amount and with sureties and liabilities as required by the court.

(e) Notwithstanding any other law to the contrary:

(1) A financial institution, trust company, national or state bank, savings bank, or savings and loan association described in Code Section 7-1-242 that seeks to serve as a trustee under any trust created under or governed by the laws of this state shall not be required to give bond for the faithful performance of its duties unless its combined capital, surplus, and undivided profits are less than \$3 million as reflected in its last statement filed with the Comptroller of the Currency of the United States or the commissioner of banking and finance; and

(2) In every case in which the trustee of any trust is required to give bond for the faithful performance of the trustee's duties in such fiduciary capacity, the bond shall be in a value equal to double the value of the trust estate; provided, however, that the trustee may give bond in an amount equal to the value of the trust estate if the bond is secured by a licensed commercial surety authorized to transact business in this state. For purposes of this paragraph, the term 'trust estate' shall exclude real property and improvements thereon held by the trustee in a fiduciary capacity; provided, however, that upon the conversion of any such real property into personalty, the trustee shall give a new bond including the value of the personalty into which the real property has been converted.

(f) The trustee and any surety shall be held and deemed joint and several obligors and may be subjected jointly and severally to liability in the same action. No prior judgment establishing the liability of the trustee shall be necessary before an action is brought against the sureties on the bond.

(g) When a judgment has been obtained against the principal and surety or sureties on the bond of a trustee, a levy may be made upon any property of any defendant in fi. fa.

(h) A court of competent jurisdiction shall be authorized to enter a judgment and to issue a writ of execution against the principal and surety on the bond of a trustee and shall be further authorized to grant judgment and execution in favor of the surety against the principal upon payment of the judgment by the surety.

(i) Failure to comply with this Code section shall not make void or voidable or otherwise affect an act or transaction of a trustee with any third party.

53-12-204.

The authority of cotrustees to act on behalf of the trust shall be as follows:

(1) A power vested in two or more trustees shall only be exercised by their unanimous action; provided, however, that a cotrustee may delegate to one or more other cotrustees the performance of ministerial acts;

(2) If a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act unless or until the vacancy is filled; and

(3) While a cotrustee is unable to act because of inaccessibility, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act as if they were the only trustees when necessary to accomplish the purposes of the trust.

## Part 2

53-12-210.

(a) Trustees shall be compensated in accordance with either the trust instrument or any separate written agreement between the trustee and the settlor. After the settlor's death or incapacity or while the trust is irrevocable, the trust instrument or the agreement relating to the trustee's compensation may be modified as follows:

(1) If all the qualified beneficiaries are sui juris, or if some of the qualified beneficiaries are not sui juris but all of them have a guardian or conservator, the trustee and the sui juris qualified beneficiaries and the guardians or conservators of qualified beneficiaries who are not sui juris may by unanimous consent modify the trust instrument or agreement relating to the trustee's compensation without receiving the approval of any court; and

(2) If one or more of the qualified beneficiaries who are not sui juris have no guardian or conservator, and all of the other qualified beneficiaries, including the guardians or conservators of qualified beneficiaries who are not sui juris, and the trustee are in agreement, any sui juris qualified beneficiary or the guardian or conservator of a beneficiary who is not sui juris or the trustee shall petition the court to approve a

modification of the trust instrument or agreement relating to the trustee's compensation.  
The court shall appoint a guardian ad litem for each beneficiary who is not sui juris and  
who does not have a guardian or conservator, and service of notice of the petition for  
modification of the trustee's compensation shall be made on each such guardian ad litem.  
The court shall hold a hearing and shall either allow or deny the modification that is  
requested in the petition.

(b) If there is no provision for trustee compensation in the trust instrument and there is no  
separate written agreement between the trustee and the settlor relating to the trustee's  
compensation, a separate written agreement relating to the trustee's compensation may be  
entered into between the trustee and the qualified beneficiaries as follows:

(1) If all the qualified beneficiaries are sui juris or if some of the qualified beneficiaries  
are not sui juris but all of them have a guardian or conservator, the trustee and the sui  
juris qualified beneficiaries and the guardians or conservators of beneficiaries who are  
not sui juris may by unanimous consent enter into an agreement relating to the trustee's  
compensation without receiving the approval of any court; or

(2) If one or more of the qualified beneficiaries who are not sui juris have no guardian  
or conservator, and all of the other qualified beneficiaries, including the guardians or  
conservators of qualified beneficiaries who are not sui juris, and the trustee are in  
agreement, any sui juris qualified beneficiary or the guardian or conservator of a  
beneficiary who is not sui juris or the trustee shall petition the court to approve an  
agreement relating to the trustee's compensation. The court shall appoint a guardian ad  
litem for each beneficiary who is not sui juris and who does not have a guardian or  
conservator, and service of notice of the petition for approval of the agreement shall be  
made on each such guardian ad litem. The court shall hold a hearing and shall either  
allow or deny the agreement that is requested in the petition.

(c) In cases other than those described in subsections (a) and (b) of this Code section, the  
trustee shall be entitled to compensation as follows:

(1) With respect to a corporate trustee, its published fee schedule, provided such fees are  
reasonable under the circumstances; and

(2) With respect to an individual trustee:

(A) One percent of cash and the fair market value of any other principal asset received  
upon the initial funding of the trust and at such time as additional principal assets are  
received; and

(B) An annual fee calculated in accordance with the following schedule based upon the  
cash and the market value of the other principal assets valued as of the last day of the  
trust accounting year prorated based on the length of service by the trustee during that  
year.

	<u>Percentage Fee</u>	<u>Market Value</u>
962		
963	<u>1.75 percent / year on the first. . . . .</u>	<u>\$ 500,000.00</u>
964	<u>1.25 percent / year on the next. . . . .</u>	<u>\$ 500,000.00</u>
965	<u>1.00 percent / year on the next. . . . .</u>	<u>\$ 1,000,000.00</u>
966	<u>0.85 percent / year on the next. . . . .</u>	<u>\$ 3,000,000.00</u>
967	<u>0.50 percent / year on values over. . . . .</u>	<u>\$ 5,000,000.00</u>

968 53-12-211.

969 Unless any separate written agreement provides otherwise:

970 (1) Each cotrustee shall be compensated as specified by the terms of the trust as each  
 971 trustee may have agreed or in accordance with a published fee schedule, and such  
 972 compensation among cotrustees shall not be apportioned unless they shall agree  
 973 otherwise; and

974 (2) The annual fee paid pursuant to subparagraph (c)(2)(B) of Code Section 53-12-210  
 975 shall be apportioned among trustees and successor trustees according to the proportion  
 976 of time each rendered services during the year.

977 53-12-212.

978 (a) A trustee who is receiving compensation as described in subsection (c) of Code Section  
 979 53-12-210 may petition the court for compensation that is greater than the compensation  
 980 allowed under that subsection. Service of notice of the petition for extra compensation  
 981 shall be made on all qualified beneficiaries or their guardians or conservators. The court  
 982 shall appoint a guardian ad litem for each qualified beneficiary who is not sui juris and who  
 983 does not have a guardian or conservator, and service of notice of the petition for  
 984 modification of the trustee's compensation shall be made on each such guardian ad litem.  
 985 (b) After hearing any objection, the court shall allow such extra compensation as the court  
 986 deems reasonable. The allowance of extra compensation shall be conclusive as to all  
 987 parties in interest.

988 53-12-213.

989 A trustee shall be entitled to be reimbursed out of the trust property for reasonable expenses  
 990 that were properly incurred in the administration of the trust.

53-12-214.

(a) Any trustee may receive compensation for services, as specified in this subsection, from a corporation or other business enterprise, where the trust estate owns an interest in the corporation or other business enterprise, provided that:

(1) The services provided by the trustee to the corporation or other business enterprise are of a managerial, executive, or business advisory nature;

(2) The compensation received for the services is reasonable; and

(3) The services are performed and the trustee is paid pursuant to a contract executed by the trustee and the corporation or business enterprise, which contract is approved by a majority of those members of the board of directors or other similar governing authority of the corporation or business enterprise who are not officers or employees of the trustee and are not related to the trustee and provided, further, that the contract is approved by the court.

(b) Any trustee receiving compensation from a corporation or other business enterprise for services to it as described in subsection (a) of this Code section shall not receive extra compensation in respect to such services as provided in Code Section 53-12-212; provided, however, that nothing in this Code section shall prohibit the receipt by the trustee of extra compensation for services rendered in respect to other assets or matters involving the trust estate.

(c) Nothing in this Code section shall prohibit the receipt by trustees of normal commissions and compensation for the usual services performed by trustees pursuant to law or pursuant to any fee agreement executed by the settlor.

(d) The purpose of this Code section is to enable additional compensation to be paid to trustees for business management and advisory services to corporations and business enterprises pursuant to contract, without the necessity of petitioning for extra compensation pursuant to Code Section 53-12-212.

### Part 3

53-12-220.

(a) A trustee may resign:

(1) In the manner and under the circumstances described in the trust instrument;

(2) Upon petition to the court showing that all of the qualified beneficiaries are sui juris or that all of the qualified beneficiaries who are not sui juris have guardians or conservators and that all the qualified beneficiaries or their guardians or conservators have agreed in writing to the resignation; or

(3) If all the sui juris qualified beneficiaries and their guardians or conservators are not in agreement, or if one or more of the qualified beneficiaries is not sui juris and has no guardian or conservator, upon petition to the court showing to the satisfaction of the court that:

(A) The trustee is unable to continue serving as trustee due to age, illness, infirmity, or similar reason;

(B) Greater burdens have devolved upon the office of trustee than those which were originally contemplated or should have been contemplated when the trust was accepted, and the assumption of the additional burdens would work a hardship upon the trustee;

(C) Disagreement exists between one or more of the beneficiaries of the trust and the trustee with respect to the trustee's management of the trust, which disagreement and conflict appear detrimental to the best interests of the trust;

(D) The resignation of the trustee will result in or permit substantial financial benefit to the trust;

(E) The resigning trustee is one of two or more acting trustees, and the cotrustee or cotrustees will continue in office with no detriment to the trust contemplated; or

(F) The resignation would not be disadvantageous to the trust.

(b) The petition to the court provided for in paragraph (3) of subsection (a) of this Code section shall be served upon all qualified beneficiaries or their guardians or conservators. The court shall appoint a guardian ad litem for each beneficiary who is not sui juris and who does not have a guardian or conservator, and service of notice of the petition for resignation shall be made on each such guardian ad litem.

(c) The resignation of a trustee shall not relieve the trustee from liability for any actions prior to the resignation except to the extent the trustee is relieved by the court in the appropriate proceeding or to the extent relieved by the trust instrument.

(d) If the resignation would create a vacancy required to be filled, then the trustee's resignation shall not be effective until the successor trustee accepts the trust.

53-12-221.

(a) A trustee may be removed:

(1) In accordance with the provisions of the trust instrument; or

(2) Upon petition to the court by any interested person showing good cause.

(b) In the discretion of the court, in order to protect the trust property or the interests of any beneficiary, on its own motion or on motion of a cotrustee or other interested person, the court may compel the trustee whose removal is being sought to surrender trust property to a cotrustee, a receiver, or temporary trustee pending a decision on a petition for removal



of a trustee or pending appellate review of such decision. To the extent the court deems necessary, the powers of the trustee also may be suspended.

## ARTICLE 12

53-12-230.

(a) At any time following 12 months from the date of acceptance of a trust, but not more frequently than once every 12 months, a trustee may petition the court to approve an interim accounting relieving the trustee from liability for the period covered by the interim accounting.

(b) The petition shall set forth:

(1) The name and address of the trustee;

(2) Any provisions of the trust relating to matters that will be covered by the interim accounting;

(3) The beneficiaries of the trust, specifying any beneficiary believed to be in need of a guardian ad litem;

(4) The period which the accounting covers;

(5) A statement of receipts and disbursements of the trust that have occurred since the trustee's acceptance of the trust or since the effective date of the last accounting;

(6) In a separate schedule, the principal on hand at the beginning of the accounting period and the status at that time of its investment; the investments received from the settlor and still held; additions to principal during the accounting period, with dates and sources of acquisition; investments collected, sold, or charged off during the accounting period, with the consequent loss or gain and whether credited to principal or income; investments made during the accounting period, with the date, source, and cost of each; deductions from the principal during the accounting period, with the date and purpose of each; and principal on hand at the end of the accounting period, how invested, and the estimated market value of each investment;

(7) In a separate schedule, the income on hand at the beginning of the accounting period and in what form held; income received during the accounting period, when, and from what source; income paid out during the accounting period, when, to whom, and for what purpose; and income on hand at the end of the accounting period and how invested;

(8) A statement of the assets and liabilities of the trust as of the end of the accounting period; and

(9) Other information reasonably necessary to explain or understand the accounting.

(c) The petition shall be served on the beneficiaries of the trust and the surety on the trustee's bond, if any.

1095 (d) Upon review of the petition and after considering any objections thereto and any  
1096 evidence presented, the court may approve the trustee's interim accounting or enter  
1097 judgment granting appropriate relief. If no objection to the petition is filed within the time  
1098 allowed by law after service, or if the parties consent, the petition may be approved without  
1099 notice, hearing, or further proceedings. The final judgment of the court shall be binding  
1100 on all parties.

1101 (e) Costs and expenses, including reasonable attorney's fees of the trustee, shall be taxed  
1102 against the trust, unless otherwise directed by the court.

1103 53-12-231.

1104 (a) If the trustee resigns, is removed, or dies or upon the termination of the trust, a  
1105 beneficiary or the successor trustee may petition the court to require the trustee or the  
1106 trustee's personal representative to appear before the court for a final accounting.  
1107 Alternatively, the trustee or the trustee's personal representative may petition the court to  
1108 approve a final accounting relieving the trustee from liability for the period covered by the  
1109 final accounting. The settlement period shall begin from the acceptance of the trusteeship  
1110 by the trustee or the end of the period covered by the last interim accounting.

1111 (b) The petition shall set forth:

1112 (1) The name and address of the trustee;

1113 (2) The beneficiaries of the trust, specifying any beneficiary believed to be in need of a  
1114 guardian ad litem;

1115 (3) The period which the accounting covers; and

1116 (4) If the petition is filed by the trustee or the trustee's personal representative, the  
1117 petition shall also include the information required to be filed by trustees in conjunction  
1118 with the approval of an interim accounting as set forth in subsection (b) of Code Section  
1119 53-12-230.

1120 (c) The petition shall be served on the beneficiaries, the trustee, the trustee's personal  
1121 representative, if any, and the surety on the trustee's bond, if any.

1122 (d) Upon review of the trustee's final accounting and after considering any objections  
1123 thereto and any evidence presented, the court may approve the final accounting or enter  
1124 judgment granting appropriate relief. If no objection to the petition is filed within the time  
1125 allowed by law after service, or if the parties consent, the petition may be approved without  
1126 notice, hearing, or further proceedings. The final judgment of the court shall be binding  
1127 on all parties.

1128 (e) Costs and expenses, including reasonable attorney's fees of the trustee, shall be taxed  
1129 against the trust, unless otherwise directed by the court.

1130 53-12-232.

1131 Nothing in this article shall restrict the right of any party to seek an equitable accounting.

1132 ARTICLE 13

1133 Part 1

1134 53-12-240.

1135 (a) The duties contained in this part are in addition to and not in limitation of the common  
1136 law duties of the trustee, except to the extent inconsistent therewith.

1137 (b) Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith,  
1138 in accordance with its provisions and purposes.

1139 53-12-241.

1140 In administering a trust, the trustee shall exercise the judgment and care of a prudent person  
1141 acting in a like capacity and familiar with such matters, considering the purposes,  
1142 provisions, distribution requirements, and other circumstances of the trust.

1143 53-12-242.

1144 (a) Within 60 days after the date of creation of an irrevocable trust or of the date on which  
1145 a revocable trust becomes irrevocable, the trustee shall notify the qualified beneficiaries  
1146 of the trust of the existence of the trust and the name and mailing address of the trustee.  
1147 In full satisfaction of this obligation, the trustee may deliver the notice to the guardian or  
1148 conservator of any beneficiary who is not sui juris.

1149 (b) All irrevocable trusts in existence on the effective date of this part shall be deemed to  
1150 have waived this provision unless the trust instrument says otherwise.

1151 53-12-243.

1152 (a) On reasonable request by any qualified beneficiary or the guardian or conservator of  
1153 a qualified beneficiary who is not sui juris, the trustee shall provide the qualified  
1154 beneficiary with a report of information, to the extent relevant to that beneficiary's interest,  
1155 about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee,  
1156 and the particulars relating to the administration of the trust, including the trust provisions  
1157 that describe or affect such beneficiary's interest.

1158 (b)(1) A trustee shall account at least annually, at the termination of the trust, and upon  
1159 a change of trustees to each qualified beneficiary of an irrevocable trust to whom income  
1160 is required or authorized in the trustee's discretion to be distributed currently, and to any  
1161 person who may revoke the trust. At the termination of the trust, the trustee shall also

1162 account to each remainder beneficiary. Upon a change of trustees, the trustee shall also  
1163 account to the successor trustee. In full satisfaction of this obligation, the trustee may  
1164 deliver the accounting to the guardian or conservator of any qualified beneficiary who is  
1165 not sui juris.

1166 (2) An accounting furnished to a qualified beneficiary pursuant to paragraph (1) of this  
1167 subsection shall contain a statement of receipts and disbursements of principal and  
1168 income that have occurred during the last complete fiscal year of the trust or since the last  
1169 accounting to that beneficiary and a statement of the assets and liabilities of the trust as  
1170 of the end of the accounting period.

1171 (c) A trustee shall not be required to report information or account to a qualified  
1172 beneficiary who has waived in writing the right to a report or accounting and has not  
1173 withdrawn that waiver.

1174 (d) Subsections (a) and (b) of this Code section shall not apply to the extent that the terms  
1175 of the trust provide otherwise or the settlor of the trust directs otherwise in a writing  
1176 delivered to the trustee.

1177 (e) Nothing in this Code section shall affect the power of a court to require or excuse an  
1178 accounting.

1179 53-12-244.

1180 A trustee shall distribute all net income derived from the trust at least annually.

1181 53-12-245.

1182 A trustee shall not be under any duty to investigate the resources of any beneficiary when  
1183 determining whether to distribute trust property to such beneficiary.

1184 53-12-246.

1185 (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

1186 (b) This Code section shall not preclude the following transactions, if fair to the  
1187 beneficiaries:

1188 (1) An agreement between a trustee and a beneficiary relating to the appointment or  
1189 compensation of the trustee;

1190 (2) Payment of reasonable compensation to the trustee; or

1191 (3) Performing and receiving reasonable compensation for performing services of a  
1192 managerial, executive, or business advisory nature for a corporation or other business  
1193 enterprise, where the trust estate owns an interest in the corporation or other business  
1194 enterprise.

53-12-247.

Except to the extent that the governing trust instrument clearly manifests an intention that the trustee shall or may favor one or more of the beneficiaries, a trustee shall administer a trust impartially based on what is fair and reasonable to all of the beneficiaries and with due regard to the respective interests of income beneficiaries and remainder beneficiaries.

Part 2

53-12-260.

Notwithstanding the breadth of discretion granted to a trustee in the trust instrument, including the use of such terms as 'absolute,' 'sole,' or 'uncontrolled,' the trustee shall exercise a discretionary power in good faith.

53-12-261.

(a) As used in this Code section, the term 'fiduciary' means the one or more personal representatives of the estate of a decedent or the one or more trustees of a testamentary or inter vivos trust, whichever in a particular case is appropriate.

(b) A trustee of an express trust, without court authorization, shall be authorized:

(1) To sell, exchange, grant options upon, partition, or otherwise dispose of any property or interest therein which the fiduciary may hold from time to time, at public or private sale or otherwise, with or without warranties or representations, upon such terms and conditions, including credit, and for such consideration as the fiduciary deems advisable and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust. The party dealing with the fiduciary shall not be under a duty to follow the proceeds or other consideration received;

(2) To invest and reinvest in any property which the fiduciary deems advisable, including, but not limited to, common or preferred stocks, bonds, debentures, notes, mortgages, or other securities, in or outside the United States; insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest or in annuity contracts for any beneficiary; any real or personal property; investment trusts, including the securities of or other interests in any open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; and participations in common trust funds;

(3) To the extent and upon such terms and conditions and for such periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of

any business or other enterprise, whatever its form or organization, including, but not limited to, the power:

(A) To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(B) To dispose of any interest therein or acquire the interest of others therein;

(C) To contribute or invest additional capital thereto or to lend money thereto in any such case upon such terms and conditions as the fiduciary shall approve from time to time; and

(D) To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the trust set aside for use in the business or to the trust as a whole.

In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it shall not be necessary to itemize receipts, disbursements, and distributions of property; but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization;

(4) To form a corporation or other entity and to transfer, assign, and convey to the corporation or entity all or any part of the trust property in exchange for the stock, securities, or obligations of or other interests in any such corporation or entity and to continue to hold the stock, securities, obligations, and interests;

(5) To continue any farming operation and to do any and all things deemed advisable by the fiduciary in the management and maintenance of the farm and the production and marketing of crops and dairy, poultry, livestock, orchard, and forest products, including, but not limited to, the power:

(A) To operate the farm with hired labor, tenants, or sharecroppers;

(B) To lease or rent the farm for cash or for a share of the crops;

(C) To purchase or otherwise acquire farm machinery, equipment, and livestock;

(D) To construct, repair, and improve farm buildings of all kinds needed, in the fiduciary's judgment, for the operation of the farm;

(E) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes, such as for production, harvesting, or marketing; or for the construction, repair, or improvement of farm buildings; or for the purchase of farm machinery, equipment, or livestock;

(F) To employ approved soil conservation practices, in order to conserve, improve, and maintain the fertility and productivity of the soil;

(G) To protect, manage, and improve the timber and forest on the farm and to sell the timber and forest products when it is to the best interest of the trust;

(H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where needed;

(I) To engage in the production of livestock, poultry, or dairy products and to construct such fences and buildings and to plant pastures and crops as may be necessary to carry on such operations;

(J) To market the products of the farm; and

(K) In general, to employ good husbandry in the farming operation;

(6) To manage real property:

(A) To improve, manage, protect, and subdivide any real property;

(B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;

(C) To terminate any subdivision or part thereof;

(D) To borrow money for the purposes authorized by this paragraph for the periods of time and upon the terms and conditions as to rates, maturities, and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber the property or part thereof, whether in possession or reversion;

(E) To lease the property or part thereof, the lease to commence at the present or in the future, upon the terms and conditions, including options to renew or purchase, and for the period or periods of time as the fiduciary deems advisable even though the period or periods may extend beyond the duration of the trust;

(F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses, conveyances, or grants of every nature and kind which are lawful in the jurisdiction in which the property lies;

(G) To manage and improve timber and forests on the property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(H) To modify, renew, or extend leases;

(I) To employ agents to rent and collect rents;

(J) To create easements and to release, convey, or assign any right, title, or interest with respect to any easement on the property or part thereof;

(K) To erect, repair, or renovate any building or other improvement on the property and to remove or demolish any building or other improvement in whole or in part; and

(L) To deal with the property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with the property either in the same or in different ways from those specified elsewhere in this paragraph;

(7) To lease personal property of the trust or part thereof, the lease to commence at the present or in the future, upon the terms and conditions, including options to renew or purchase, and for the period or periods of time as the fiduciary deems advisable even though the period or periods may extend beyond the duration of the trust;

(8)(A) To pay debts, taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust; and

(B) To pay from the trust all charges that the fiduciary deems necessary or appropriate to comply with laws regulating environmental conditions and to remedy or ameliorate any such conditions which the fiduciary determines adversely affect the trust or otherwise are liabilities of the trust and to apportion all such charges among the several bequests and trusts and the interests of the beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under the circumstances;

(9) To receive additional property from any source and to administer the additional property as a portion of the appropriate trust under the management of the fiduciary, provided that the fiduciary shall not be required to receive the property without the fiduciary's consent;

(10) In dealing with one or more fiduciaries of the estate or any trust created by the decedent or the settlor or any spouse or child of the decedent or settlor and irrespective of whether the fiduciary is a personal representative or trustee of such other estate or trust;

(A) To sell real or personal property of the estate or trust to such fiduciary or to exchange such property with such fiduciary upon such terms and conditions as to sale price, terms of payment, and security as shall seem advisable to the fiduciary; and the fiduciary shall be under no duty to follow the proceeds of any such sale; and

(B) To borrow money from the estate or trust for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and securities as the fiduciary shall deem advisable for the purpose of paying debts of the decedent or settlor, taxes, the costs of the administration of the estate or trust, and like charges against the estate or trust or any part thereof or of discharging any other liabilities of the estate or trust and to mortgage, pledge, or otherwise encumber such portion of the estate or trust as may be required to secure the loan and to renew existing loans;

(11) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the purpose of paying debts, taxes, or other charges against the trust or any part thereof and to mortgage, pledge, or otherwise encumber such portion of the trust as may be required to secure the loan and to renew existing loans either as maker or endorser;

(12) To make loans or advances for the benefit or the protection of the trust;



1337 (13) To vote shares of stock or other ownership interests owned by the trust, in person  
1338 or by proxy, with or without power of substitution;

1339 (14) To hold a security in the name of a nominee or in other form without disclosure of  
1340 the fiduciary relationship, so that title to the security may pass by delivery; but the  
1341 fiduciary shall be liable for any act of the nominee in connection with the security so  
1342 held;

1343 (15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures,  
1344 notes, mortgages, or other property into other stocks, bonds, debentures, notes,  
1345 mortgages, or other property; to subscribe for other or additional stocks, bonds,  
1346 debentures, notes, mortgages, or other property; and to hold the stocks, bonds,  
1347 debentures, notes, mortgages, or other property so acquired as investments of the trust so  
1348 long as the fiduciary shall deem advisable;

1349 (16) To unite with other owners of property similar to any which may be held at any time  
1350 in the trust, in carrying out any plan for the consolidation or merger, dissolution or  
1351 liquidation, foreclosure, lease, or sale of the property or the incorporation or  
1352 reincorporation, reorganization, or readjustment of the capital or financial structure of any  
1353 corporation, company, or association the securities of which may form any portion of an  
1354 estate or trust; to become and serve as a member of a shareholders' or bondholders'  
1355 protective committee; to deposit securities in accordance with any plan agreed upon; to  
1356 pay any assessments, expenses, or sums of money that may be required for the protection  
1357 or furtherance of the interest of the beneficiaries of any trust with reference to any such  
1358 plan; and to receive as investments of the trust any securities issued as a result of the  
1359 execution of such plan;

1360 (17) To adjust the interest rate from time to time on any obligation, whether secured or  
1361 unsecured, constituting a part of the trust;

1362 (18) To continue any obligation, whether secured or unsecured, upon and after maturity,  
1363 with or without renewal or extension, upon such terms as the fiduciary shall deem  
1364 advisable, without regard to the value of the security, if any, at the time of the  
1365 continuance;

1366 (19) To foreclose, as an incident to the collection of any bond, note, or other obligation,  
1367 any deed to secure debt or any mortgage, deed of trust, or other lien securing the bond,  
1368 note, or other obligation and to bid in the property at the foreclosure sale or to acquire the  
1369 property by deed from the mortgagor or obligor without foreclosure; and to retain the  
1370 property so bid in or taken over without foreclosure;

1371 (20) To carry such insurance coverage as the fiduciary shall deem advisable;

1372 (21) To collect, receive, and issue receipts for rents, issues, profits, and income of the  
1373 trust;

1374 (22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle  
1375 claims involving the trust or the trustee;

1376 (B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or  
1377 otherwise deal with and settle claims in favor of or against the trust as the fiduciary  
1378 shall deem advisable; the fiduciary's decision shall be conclusive between the fiduciary  
1379 and the beneficiaries of the trust and the person against or for whom the claim is  
1380 asserted, in the absence of fraud by such persons and, in the absence of fraud, bad faith,  
1381 or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the  
1382 beneficiaries of the trust; and

1383 (C) To compromise all debts, the collection of which are doubtful, belonging to the  
1384 trust when such settlements will advance the interests of those represented;

1385 (23) To employ and compensate, out of income or principal or both and in such  
1386 proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful  
1387 to advise or assist in the administration of any trust, including, but not limited to, agents,  
1388 accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental agents,  
1389 realtors, appraisers, and tax specialists; and to do so without liability for any neglect,  
1390 omission, misconduct, or default of the agent or representative, provided such person was  
1391 selected and retained with due care on the part of the fiduciary;

1392 (24) To acquire, receive, hold, and retain undivided the principal of several trusts created  
1393 by a single trust instrument until division shall become necessary in order to make  
1394 distributions; to hold, manage, invest, reinvest, and account for the several shares or parts  
1395 of shares by appropriate entries in the fiduciary's books of account and to allocate to each  
1396 share or part of share its proportionate part of all receipts and expenses; provided,  
1397 however, that this paragraph shall not defer the vesting in possession of any share or part  
1398 of share of the trust;

1399 (25) To set up proper and reasonable reserves for taxes, assessments, insurance  
1400 premiums, depreciation, obsolescence, amortization, depletion of mineral or timber  
1401 properties, repairs, improvements, and general maintenance of buildings or other property  
1402 out of rents, profits, or other income received;

1403 (26) To value assets of the trust and to distribute them in cash or in kind, or partly in cash  
1404 and partly in kind, in divided or undivided interests, as the fiduciary finds to be most  
1405 practical and in the best interest of the distributees, the fiduciary being able to distribute  
1406 types of assets differently among the distributees;

1407 (27) To transfer money or other property distributable to a beneficiary who is under age  
1408 21, an adult for whom a guardian or conservator has been appointed, or an adult who the  
1409 fiduciary reasonably believes is incapacitated by distributing such money or property  
1410 directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) Distributing it to the beneficiary's custodian under 'The Georgia Transfers to Minors Act' or similar state law and, for that purpose, creating a custodianship and designating a custodian;

(C) Distributing it to the beneficiary's custodial trustee under the Uniform Custodial Trust Act as enacted in another state and, for that purpose, creating a custodial trust; or

(D) Distributing it to any other person, whether or not appointed guardian or conservator by any court, who shall, in fact, have the care and custody of the person of the beneficiary;

The fiduciary shall not be under any duty to see to the application of the distributions so made if the fiduciary exercised due care in the selection of the person, including the beneficiary, to whom the payments were made; and the receipt of the person shall be full acquittance to the fiduciary;

(28) To make, modify, and execute contracts and other instruments, under seal or otherwise, as the fiduciary deems advisable; and

(29) To serve without making and filing inventory and appraisement, without filing any annual or other returns or reports to any court, and without giving bond; but, in addition to any rights the beneficiaries may have under subsection (b) of Code Section 53-12-243, the fiduciary shall furnish to the income beneficiaries, at least annually, a statement of receipts and disbursements.

53-12-262.

A corporate fiduciary, without authorization by the court, may exercise the power:

(1) To retain stock or other securities of its own issue received on the creation of the trust or later contributed to the trust, including the securities into which the securities originally received or contributed may be converted or which may be derived therefrom as a result of merger, consolidation, stock dividends, splits, liquidations, and similar procedures. The corporate fiduciary may exercise by purchase or otherwise any rights, warrants, or conversion features attaching to any such securities. The authority described in this paragraph shall:

(A) Apply to the exchange or conversion of stock or securities of the corporate fiduciary's own issue, whether or not any new stock or securities received in exchange therefor are substantially equivalent to those originally held;

(B) Apply to the continued retention of all new stock and securities resulting from merger, consolidation, stock dividends, splits, liquidations, and similar procedures and received by virtue of such conversion or exchange of stock or securities of the corporate

fiduciary's own issue, whether or not the new stock or securities are substantially equivalent to those originally received by the fiduciary;

(C) Have reference, inter alia, to the exchange of such stock or securities for stock or securities of any holding company which owns stock or other interests in one or more other corporations, including the corporate fiduciary, whether the holding company is newly formed or already existing and whether or not any of the corporations own assets identical or similar to the assets of or carry on a business identical or similar to the corporation whose stock or securities were previously received by the fiduciary and the continued retention of stock or securities, or both, of the holding company; and

(D) Apply regardless of whether any of the corporations have officers, directors, employees, agents, or trustees in common with the corporation whose stock or securities were previously received by the fiduciary; and

(2) To borrow money from its own banking department for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the purpose of paying debts, taxes, or other charges against the estate or any trust or any part thereof, and to mortgage, pledge, or otherwise encumber such portion of the estate or any trust as may be required to secure the loan or loans; and to renew existing loans either as maker or endorser.

53-12-263.

(a) By an expressed intention of the testator or settlor contained in a will or in a trust instrument in writing whereby an express trust is created, any or all of the powers or any portion thereof enumerated in this part, as they exist at the time of the signing of the will by the testator or at the time of the signing by the first settlor who signs the trust instrument, may be, by appropriate reference made thereto, incorporated in the will or other written instrument with the same effect as though such language were set forth verbatim in the trust instrument.

(b) At any time after the execution of a revocable trust, the settlor or anyone who is authorized by the trust instrument to modify the trust may incorporate any or all of the powers or any portion thereof enumerated in this article, as they exist at the time of the incorporation.

(c) Incorporation of one or more of the powers contained in this article, by reference to the appropriate portion of Code Section 53-12-261, shall be in addition to and not in limitation of the common-law or statutory powers of the fiduciary.

(d)(1) A provision in any will or trust instrument which incorporates powers by citation to Georgia Laws 1973, page 846; Code 1933, Section 108-1204 (Harrison); or former Code Section 53-12-40 or 53-12-232 which were in effect at the time the trust was

created and which was valid under the law in existence at the time the will was signed by the testator or at the time of the signing by the first settlor who signs the trust instrument shall be effective notwithstanding the subsequent repeal of such statute.

(2) A provision in any will or trust instrument which was signed by the testator or by the first settlor to sign after June 30, 1991, but before July 1, 1992, and which incorporates powers by citation to former Code Section 53-12-40 in effect on the date of such signing shall be deemed to mean and refer to the corresponding powers contained in former Code Section 53-12-232.

(e) If any or all of the powers contained in this article are incorporated by reference into a will by a testator:

(1) The term 'trust' includes the estate held by the personal representative;

(2) The term 'trustee' or 'fiduciary' includes the personal representative; and

(3) The term 'beneficiaries of the trust' includes distributees of the estate.

53-12-264.

The qualified beneficiaries of a trust that omits any of the powers in Code Section 53-12-261 may by unanimous consent authorize but not require the court to grant to the trustee those powers. With respect to any qualified beneficiary who is not sui juris, such consent may be given by the duly appointed conservator, if any, or if none, by the duly appointed guardian, if any, or if none, by either parent in the case of a minor, or if none, by a guardian ad litem appointed to represent the qualified beneficiary who is not sui juris.

### Part 3

53-12-270.

(a) Subject to subsection (c) of this Code section, and unless the trust provisions expressly indicate that a rule in this subsection shall not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on such trustee a power to make discretionary distributions to or for such trustee's personal benefit may exercise such power only in accordance with an ascertainable standard; and

(2) A trustee shall not exercise a power to make discretionary distributions to satisfy a legal obligation of support that such trustee personally owes another person.

(b) A power whose exercise is limited or prohibited by subsection (a) of this Code section may be exercised by a majority of the remaining trustees whose exercise of such power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(c) Subsection (a) of this Code section shall not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the federal Internal Revenue Code of 1986, was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust if contributions to such trust qualify for the annual exclusion under Section 2503(c) of the federal Internal Revenue Code of 1986.

Part 4

53-12-280.

(a) The trustee may present a certification of trust to any person other than a beneficiary in lieu of providing a copy of the trust instrument to establish the existence of the trust provisions.

(b) The certification of trust as provided for in subsection (a) of this Code section shall contain some or all of the following information:

(1) That the trust exists and the date of the trust and any amendments;

(2) The identity of each settlor;

(3) The identity and address of each current trustee and, if more than one, the number and identity of those required to exercise the powers of the trustee;

(4) The relevant powers of the trustee and any restrictions or limitations on those powers;

(5) The revocability or irrevocability of the trust;

(6) How trust property should be titled;

(7) Except as specifically disclosed in the certification, that the transaction at issue requires no consent or action by any person other than the certifying trustee; and

(8) Such other information as the trustee deems appropriate.

(c) A certification of trust:

(1) Shall be signed by each trustee;

(2) Shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification to be incorrect; and

(3) Need not contain the dispositive provisions of the trust.

(d) The recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and any amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(e) A person who acts in reliance upon the certification of trust without knowledge that any information therein is incorrect shall not be liable to any person for so acting and may assume without inquiry that the information is correct.

(f) A person who in good faith enters into a transaction in reliance upon the certification of trust may enforce the transaction as if the information in the certification were correct.

(g) A person making a demand for the trust instrument in addition to a certification of trust or excerpts shall be liable for damages, including court costs and attorney's fees, if the court determines that such demand was not made in good faith.

(h) This Code section shall not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(i) A certification of trust in recordable form may be recorded in the office of the clerk of superior court.

#### Part 5

53-12-290.

Whenever a bank or trust company is duly authorized to act and is acting as a fiduciary, which term shall include an executor, administrator, trustee, guardian, or conservator, and has a nominee in whose name securities, including, without limitation, bonds, stocks, notes, and other evidences of title to intangible personal property, held as a fiduciary, may be registered, it shall be lawful to register securities in the name of the nominee without mention of the fiduciary relationship in the trust instrument evidencing the securities or on the books of the issuer of the same, provided that:

(1) The records of the corporate fiduciary shall at all times clearly show that the securities are held by the corporate fiduciary in its capacity as fiduciary, together with the beneficial owner or owners thereof and all facts relating to its ownership, possession, and holding thereof; and

(2) The corporate fiduciary shall not be relieved of liability for the safe custody, control, and proper distribution of the securities by reason of the registration of same in the name of any nominee.

53-12-291.

If two or more fiduciaries are acting jointly in reference to any securities, it shall be lawful to register the property in the name of any nominee or any joint corporate fiduciary. In the event that more than one corporate fiduciary is acting, it shall be lawful to register securities in the name of any nominee of any one of the corporate fiduciaries.

53-12-292.

(a) Any fiduciary holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary shall be authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in Article 8 of Title 11. When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk, in the name of the nominee of the clearing corporation, with any other such securities deposited in the clearing corporation by any person, regardless of the ownership of the securities, and certificates of small denominations may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, as managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities.

(b) A bank or trust company depositing securities pursuant to this Code section shall be subject to such rules and regulations as, in the case of state chartered institutions, the commissioner of banking and finance and, in the case of national banking associations, the comptroller of the currency may from time to time issue.

(c) A bank or trust company acting as custodian for a fiduciary, on demand by the fiduciary, shall certify in writing to the fiduciary the securities deposited by the bank or trust company in the clearing corporation for the account of the fiduciary. A fiduciary, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, shall certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(d) This Code section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on April 13, 1973, or acting thereafter, regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of the clearing corporation.

#### ARTICLE 14

53-12-300.

The trustee shall be accountable to the beneficiary for the trust property. A violation by the trustee of any duty that the trustee owes the beneficiary shall be a breach of trust.



53-12-301.

(a) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary shall have a cause of action to seek:

(1) To recover damages;

(2) To compel the trustee to perform the trustee's duties;

(3) To require an accounting;

(4) To enjoin the trustee from committing a breach of trust;

(5) To compel the trustee to redress a breach of trust by payment of money or otherwise;

(6) To appoint a temporary trustee to take possession of the trust property and administer the trust or to suspend a trustee with or without the appointment of a temporary trustee;

(7) To remove the trustee; and

(8) To reduce or deny compensation of the trustee.

(b) When trust assets are misapplied and can be traced in the hands of persons affected with notice of the misapplication, the trust shall attach to such assets. A creditor of a trust may follow assets in the hands of beneficiaries even if they were received without notice.

(c) The remedy set forth in subsection (c) of Code Section 53-12-363 shall be the exclusive remedy for an abuse of discretion as provided in Code Sections 53-12-361 and 53-12-362.

(d) The provision of remedies for breach of trust shall not prevent resort to any other appropriate remedy provided by statute or common law.

53-12-302.

(a) A trustee who commits a breach of trust shall be personally chargeable with any damages resulting from such breach of trust, including, but not limited to:

(1) Any loss or depreciation in value of the trust property as a result of such breach of trust, with interest;

(2) Any profit made by the trustee through such breach of trust, with interest;

(3) Any amount that would reasonably have accrued to the trust or beneficiary if there had been no breach of trust, with interest; and

(4) In the discretion of the court, expenses of litigation, including reasonable attorney's fees incurred in bringing an action on such breach or threat to commit such breach.

(b) If the trustee is liable for interest, then the amount of the liability for interest shall be the greater of:

(1) The amount of interest that accrues at the legal rate on judgments; or

(2) The amount of interest actually received.

53-12-303.

(a) No provision in a trust instrument shall be effective to relieve the trustee of liability for a breach of trust committed in bad faith or with reckless indifference to the interests of the beneficiaries.

(b) A trustee of a revocable trust shall not be liable to a beneficiary for any act performed or omitted pursuant to written direction from a person holding the power to revoke, including a person to whom the power to direct the trustee is delegated. If the trust is revocable in part, then this subsection shall apply with respect to the interest of the beneficiary in that part of the trust property.

(c) Whenever a trust reserves to the settlor or vests in an advisory or investment committee or in any other person, including a cotrustee, to the exclusion of one or more trustees, the authority to direct the making or retention of any investment, the excluded trustee shall be liable, if at all, only as a ministerial agent and not as trustee for any loss resulting from the making or retention or any investment pursuant to the authorized direction.

53-12-304.

(a) A successor trustee shall be liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee only if the successor trustee:

(1) Knows or reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

(2) Neglects to take reasonable steps to compel the predecessor to deliver the trust property to the successor trustee; or

(3) Neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or reasonably should have known of the predecessor trustee's breach.

(b) A trustee succeeding a trustee who was also the settlor shall not be liable to the beneficiary for any action taken or omitted to be taken by the prior trustee nor shall such successor trustee have a duty to institute any action against such prior trustee or to file any claim against such prior trustee's estate for any of the prior trustee's acts or omissions as trustee. This subsection shall apply only with respect to a trust or any portion of a trust that was revocable by the settlor during the time that the settlor served as trustee and committed the act or omission.

53-12-305.

(a) A trustee shall be liable to the beneficiary for a breach committed by a cotrustee if such trustee:

- 1687 (1) Participates in a breach of trust committed by the cotrustee;  
1688 (2) Improperly delegates the administration of the trust to the cotrustee;  
1689 (3) Approves, knowingly acquiesces in, or conceals a breach of trust committed by the  
1690 cotrustee;  
1691 (4) Negligently enables the cotrustee to commit a breach of trust; or  
1692 (5) Neglects to take reasonable steps to compel the cotrustee to redress a breach of trust  
1693 in a case where such trustee knows or reasonably should have known of the breach of  
1694 trust.

- 1695 (b) If two or more cotrustees are jointly liable to the beneficiary, each cotrustee shall be  
1696 entitled to contribution from the other, as determined by the degree of each cotrustee's  
1697 fault.

1698 53-12-306.

- 1699 (a) A trustee may maintain an action against a cotrustee to:

- 1700 (1) Compel the cotrustee to perform duties required under the trust;  
1701 (2) Enjoin the cotrustee from committing a breach of trust; or  
1702 (3) Compel the cotrustee to redress a breach of trust committed by such cotrustee.

- 1703 (b) The provision of remedies for a breach of trust shall not prevent resort to any other  
1704 appropriate remedy provided by statute or common law.

1705 53-12-307.

- 1706 (a) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise,  
1707 if a beneficiary has received a written report that adequately discloses the existence of a  
1708 claim against the trustee for a breach of trust, the claim shall be barred as to that  
1709 beneficiary unless a proceeding to assert the claim is commenced within two years after  
1710 receipt of the report. A report adequately discloses existence of a claim if it provides  
1711 sufficient information so that the beneficiary knows of such claim or reasonably should  
1712 have inquired into the existence of such claim. If the beneficiary has not received a report  
1713 which adequately discloses the existence of a claim against the trustee for a breach of trust,  
1714 such claim shall be barred as to that beneficiary unless a proceeding to assert such claim  
1715 is commenced within six years after the beneficiary discovered, or reasonably should have  
1716 discovered, the subject of such claim.

- 1717 (b) A successor trustee's claim against a predecessor trustee shall be barred unless a  
1718 proceeding to assert such claim is commenced within two years after such successor trustee  
1719 takes office.

1720 (c) A trustee's claim against a cotrustee shall be barred unless a proceeding to assert such  
1721 claim is commenced within two years after the date the cause of action against the cotrustee  
1722 arises.

1723 53-12-308.

1724 (a) A trustee shall not be personally liable on any warranty made in any conveyance unless  
1725 the intention to create a personal liability is distinctly expressed.

1726 (b) Unless otherwise provided in the contract, a trustee shall not be personally liable on  
1727 contracts properly entered into in the trustee's fiduciary capacity unless the trustee fails to  
1728 reveal the trustee's representative capacity in the contract.

1729 (c) A judgment rendered in an action brought against the trust shall impose no personal  
1730 liability on the trustee or the beneficiary.

1731 ARTICLE 15

1732 53-12-320.

1733 (a) Any nonresident who is eligible to serve as a trustee under Code Section 53-12-201  
1734 may act as a trustee in this state pursuant to the terms of this Code section.

1735 (b) Any nonresident trustee who acts as a trustee in this state shall be deemed to have  
1736 consented to service upon the Secretary of State of any summons, notice, or process in  
1737 connection with any action or proceeding in the courts of this state growing out of or based  
1738 upon any act or failure to act on the part of the trustee unless the trustee shall designate as  
1739 the agent for such service some person who may be found and served with notice,  
1740 summons, or process in this state by a designation to be filed, from time to time, in the  
1741 office of the Secretary of State, giving the name of the agent and the place in this state  
1742 where the agent may be found and served.

1743 (c) If a nonresident trustee fails to designate a person who may be found and served with  
1744 summons, notice, or process in this state, service of summons, notice, or process shall be  
1745 made upon such trustee by serving a copy of the petition or other pleading, with process  
1746 attached thereto on the Secretary of State. The service shall be sufficient service upon such  
1747 nonresident trustee, provided that notice of the service and a copy of the petition and  
1748 process is forthwith sent by registered or certified mail or statutory overnight delivery by  
1749 the plaintiff or the plaintiff's agent to such trustee, in the state where such trustee resides,  
1750 and the return receipt is appended to the summons or other process and filed with the  
1751 summons, petition, and other papers in the court where the action is pending. The  
1752 Secretary of State shall charge and collect a fee as set out in Code Section 45-13-26 for  
1753 service of process on him or her under this Code section.

53-12-321.

(a) Any foreign entity may act in this state as trustee, executor, administrator, guardian, or any other like or similar fiduciary capacity, whether the appointment is by law, will, deed, inter vivos trust, security deed, mortgage, deed of trust, court order, or otherwise without the necessity of complying with any law of this state relating to the qualification of foreign entities to do business in this state or the licensing of foreign entities to do business in this state, except as provided in this article, and notwithstanding any prohibition, limitation, or restriction contained in any other law of this state, provided only that:

(1) The foreign entity is eligible to act as a fiduciary in this state under Code Section 7-1-242; and

(2) The foreign entity is authorized to act in the fiduciary capacity in the state in which it is incorporated or organized or, if the foreign entity is a national banking association, in the state in which it has its principal place of business.

(b) Any foreign entity seeking to exercise fiduciary powers in this state, upon qualifying in this state to act in any of such fiduciary capacities, shall not be required by law to give bond, if bond is relieved by the instrument, law, or court order in which such entity has been designated to act in such fiduciary capacity.

(c) Nothing in this article shall be construed to prohibit or make unlawful any activity in this state by a bank or other entity which is not incorporated or organized under the laws of this state or by a national bank which does not have its principal place of business in this state, which activity would be lawful in the absence of this article.

53-12-322.

A foreign entity, insofar as it acts in a fiduciary capacity in this state pursuant to this article, shall not be required to obtain a certificate of authority to transact business in this state as required by Article 15 of Chapter 2 of Title 14; provided, however, that such foreign entity shall not establish or maintain in this state a place of business, branch office, or agency for the conduct in this state of business as a fiduciary.

53-12-323.

(a) Prior to the time when any foreign entity acts pursuant to the authority of this article in any fiduciary capacity in this state, the foreign entity shall file with the Secretary of State a verified statement which shall state:

(1) The correct name of the foreign entity;

(2) The name of the state under the laws of which it is incorporated or organized or, if the foreign entity is a national banking association, a statement of that fact;

1789 (3) The address of its principal business office;

1790 (4) In what fiduciary capacity it desires to act in this state;

1791 (5) That it is authorized to act in a similar fiduciary capacity in the state in which it is  
1792 incorporated or organized or, if it is a national banking association, in which it has its  
1793 principal place of business and the basis on which it is eligible to act as a fiduciary in  
1794 Georgia under Code Section 7-1-242; and

1795 (6) The name and address of a person who may be found and served with notice,  
1796 summons, or process in this state and who is designated by the foreign entity as its agent  
1797 for such service.

1798 (b) The statement provided for in subsection (a) of this Code section shall be verified by  
1799 an officer of the foreign entity, and there shall be filed with it such certificates of public  
1800 officials and copies of documents certified by public officials as may be necessary to show  
1801 that the foreign entity is authorized to act in a fiduciary capacity similar to those in which  
1802 it desires to act in this state, in the state in which it is incorporated or organized, or, if it is  
1803 a national banking association, in which it has its principal place of business.

1804 (c) Any foreign entity that acts as a trustee in this state shall be deemed to have consented  
1805 to service upon the Secretary of State of any summons, notice, or process in connection  
1806 with any action or proceeding in the courts of this state growing out of or based upon any  
1807 act or failure to act on the part of the trustee unless the trustee shall designate as the agent  
1808 for such service some person who may be found and served with notice, summons, or  
1809 process in this state by a designation to be filed, from time to time, in the office of the  
1810 Secretary of State, giving the name of the agent and the place in this state where the agent  
1811 may be found and served.

1812 (d) If a foreign entity fails to designate a person who may be found and served with  
1813 summons, notice, or process in this state, service of summons, notice, or process shall be  
1814 made upon such foreign entity by serving a copy of the petition or other pleading, with  
1815 process attached thereto on the Secretary of State. The service shall be sufficient service  
1816 upon such foreign entity, provided that notice of the service and a copy of the petition and  
1817 process is forthwith sent by registered or certified mail or statutory overnight delivery by  
1818 the plaintiff or the plaintiff's agent to such foreign entity at the address that is on file with  
1819 the Secretary of State, and the return receipt is appended to the summons or other process  
1820 and filed with the summons, petition, and other papers in the court where the action is  
1821 pending. The Secretary of State shall charge and collect a fee as set out in Code Section  
1822 45-13-26 for service of process on him or her under this Code section.

ARTICLE 16

Part 1

53-12-340.

(a) In investing and managing trust property, a trustee shall exercise the judgment and care under the circumstances then prevailing of a prudent person acting in a like capacity and familiar with such matters, considering the purposes, provisions, and distribution requirements of the trust.

(b) Among the factors that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) Anticipated tax consequences;

(4) The attributes of the portfolio,

(5) The expected return from income and appreciation;

(6) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

(7) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries or to the settlor;

(8) The anticipated duration of the trust; and

(9) Any special circumstances.

(c) Any determination of liability for investment performance shall consider not only the performance of a particular investment but also the performance of the portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(d) A trustee who has special investment skills or expertise shall have a duty to use those special skills or expertise. A trustee who is named trustee in reliance upon such trustee's representation that such trustee has special investment skills or expertise shall be held liable for failure to make use of such degree of skill or expertise.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee that is a bank or trust company shall not be precluded from acquiring and retaining the securities of or other interests in an investment company or investment trust because the bank or trust company or an affiliate provides services to the investment company or investment trust as investment adviser, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise and receives compensation for such services.

53-12-341.

A trustee shall reasonably manage the risk of concentrated holdings of assets in a trust by diversifying or by using other appropriate mechanisms, except as otherwise provided in this Code section, as follows:

(1) The duty imposed by this Code section shall not apply if the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without complying with the duty;

(2) The trustee shall not be liable for failing to comply with the duty imposed by this Code section to the extent that the terms of the trust instrument limit or waive the duty; and

(3) Except as provided in this paragraph, the duty imposed by this Code section shall apply on or after January 1, 2011. With respect to any trust that is or becomes irrevocable before January 1, 2011, the duty imposed by this Code section shall not apply:

(A) To the trust to the extent such trust instrument directs or permits the trustee to retain, invest, exchange, or reinvest assets without regard to any duty to diversify, without the need to diversify or create a diversity of investments, or without liability for either depreciation or failing to diversify, or contains other similar language expressing a settlor's intent to provide similar discretion to the trustee; or

(B) Absent gross neglect, with respect to an asset that was transferred to the trustee of such trust by any settlor or gratuitous transferor.

53-12-342.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, provisions, distributions requirements, and other circumstances of the trust and with the requirements of this article.

53-12-343.

Compliance with the investment rules of this part shall be determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

53-12-344.

The following terminology or comparable language in the provisions of a trust, unless otherwise limited or modified, shall authorize any investment or strategy permitted under Article 16 and 17 of this chapter: 'investments permissible by law for investment of trust



funds,'legal investments,'authorized investments,'using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital,'prudent man rule,'prudent trustee rule,'prudent person rule,' and 'prudent investor rule.'

53-12-345.

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation consistent with the purposes and provisions of the trust; and

(3) Reviewing periodically the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegation function, an agent shall owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this Code section, and who takes reasonable steps to compel an agent to whom the function was delegated to redress a breach of duty to the trust, shall not be liable to the beneficiaries of the trust or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent shall waive the defense of lack of personal jurisdiction and shall submit to the jurisdiction of this state.

## Part 2

53-12-360.

In allocating receipts and disbursements to or between principal and income and with respect to any matter within the scope of Article 17 of this chapter:

(1) A trustee shall administer a trust in accordance with the governing trust instrument, even if there is a different provision in Article 17 of this chapter;

(2) A trustee may administer a trust by the exercise of a discretionary power of administration regarding a matter within the scope of Article 17 of this chapter given to the trustee by the governing trust instrument, even if the exercise of the power produces a result different from a result required or permitted by Article 17 of this chapter. No

inference that the trustee has improperly exercised the discretionary power shall arise from the fact that the trustee has made an allocation contrary to a provision of Article 17 of this chapter;

(3) A trustee shall administer a trust in accordance with Article 17 of this chapter if the governing trust instrument does not contain a different provision or does not give the trustee a discretionary power of administration regarding a matter within the scope of Article 17 of this chapter; and

(4) A trustee shall add a receipt or charge a disbursement to principal to the extent that the governing trust instrument and Article 17 of this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

53-12-361.

(a) Subject to subsections (c) and (f) of this Code section, a trustee may adjust between principal and income by allocating an amount of income to principal or an amount of principal to income to the extent the trustee considers appropriate if:

(1) The governing trust instrument describes what may or shall be distributed to a beneficiary by referring to the trust's income; and

(2) The trustee determines, after applying the rules in Code Section 53-12-360, that the trustee is unable to comply with Code Section 53-12-247.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this Code section, a trustee may consider, among other things:

(1) The size of the trust;

(2) The nature and estimated duration of the trust;

(3) The liquidity and distribution requirements of the trust;

(4) The needs for regular distributions and preservation and appreciation of capital;

(5) The expected tax consequences of an adjustment;

(6) The net amount allocated to income under this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, and tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor or testator;

(8) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the governing trust instrument;

(9) Whether and to what extent the governing trust instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal

or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(10) The intent of the settlor or testator; and

(11) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation on the trust.

(c) A trustee shall not make an adjustment under this Code section if:

(1) The adjustment would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(2) The adjustment is from trust funds which are permanently set aside for charitable purposes under the governing trust instrument and for which a federal charitable, estate, or gift tax deduction has been taken, unless both income and principal are so set aside;

(3) If:

(A) Possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

(B) The individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(4) If:

(A) Possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be subject to federal estate, gift, or generation-skipping transfer tax with respect to an individual; and

(B) The assets would not be subject to federal estate, gift, or generation-skipping tax with respect to the individual if the trustee did not possess the power to make an adjustment;

(5) If the trustee is a beneficiary of the trust; or

(6) If the trust has been converted under Code Section 53-12-362.

(d) If paragraph (3), (4), or (5) of subsection (c) of this Code section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee is prohibited by the governing trust instrument.

(e)(1) If paragraph (2) of this subsection applies, a trustee may release:

(A) The entire power conferred by subsection (a) of this Code section;

(B) The power to adjust from income to principal; or

(C) The power to adjust from principal to income.

(2) A release under paragraph (1) of this subsection shall be permissible if:

1996 (A) The trustee is uncertain about whether possessing or exercising the power will  
 1997 cause a result described in paragraphs (1) through (6) of subsection (c) of this Code  
 1998 section; or  
 1999 (B) The trustee determines that possessing or exercising the power will or may deprive  
 2000 the trust of a tax benefit or impose a tax burden not described in subsection (c) of this  
 2001 Code section.  
 2002 (3) The release may be permanent or for a specified period, including a period measured  
 2003 by the life of an individual.  
 2004 (f) A governing trust instrument which limits the power of a trustee to make an adjustment  
 2005 between principal and income shall not affect the application of this Code section unless  
 2006 it is clear from the governing trust instrument that it is intended to deny the trustee the  
 2007 power of adjustment conferred by subsection (a) of this Code section.  
  
 2008 53-12-362.  
 2009 (a) Unless expressly prohibited by the trust instrument, a trustee may release the power to  
 2010 adjust under Code Section 53-12-361 and convert a trust into a unitrust as described in this  
 2011 Code section if:  
 2012 (1) The trustee determines that the conversion will enable the trustee to better carry out  
 2013 the intent of the settlor or testator and the purposes of the trust;  
 2014 (2) The trustee gives written notice of the trustee's intention to release the power to adjust  
 2015 and to convert the trust into a unitrust and of how the unitrust will operate, including what  
 2016 initial decisions the trustee will make under this Code section, to:  
 2017 (A) The settlor, if living;  
 2018 (B) All living persons who are currently receiving or eligible to receive distributions  
 2019 of income of the trust; and  
 2020 (C) Without regard to the exercise of any power of appointment, all living persons who  
 2021 would receive principal of the trust if the trust were to terminate at the time of the  
 2022 giving of such notice and all living persons who would receive or be eligible to receive  
 2023 distributions of income or principal of the trust if the interests of all of the beneficiaries  
 2024 currently eligible to receive income under subparagraph (B) of this paragraph were to  
 2025 terminate at the time of the giving of such notice.  
 2026 If a beneficiary is not sui juris, such notice shall be given to the beneficiary's conservator,  
 2027 if any, and if the beneficiary has no conservator, to the beneficiary's guardian, including,  
 2028 in the case of a minor beneficiary, the beneficiary's natural guardian;  
 2029 (3) At least one person receiving notice under each of subparagraphs (B) and (C) of  
 2030 paragraph (2) of this subsection is legally competent; and

(4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under paragraph (2) of this subsection.

(b)(1) The trustee may petition the superior court to order the conversion to a unitrust.

(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the superior court to order the conversion.

(3) The court shall order conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(c) In deciding whether to exercise the power to convert to a unitrust as provided by subsection (a) of this Code section, a trustee may consider, among other things:

(1) The size of the trust;

(2) The nature and estimated duration of the trust;

(3) The liquidity and distribution requirements of the trust;

(4) The needs for regular distributions and preservation and appreciation of capital;

(5) The expected tax consequences of the conversion;

(6) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, and tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary;

(7) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the governing trust instrument;

(8) Whether and to what extent the governing trust instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income; and

(9) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation on the trust.

(d) After a trust is converted to a unitrust:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from:

(A) Appreciation of capital;

(B) Earnings and distributions from capital; or

(C) Both appreciation of capital and earnings and distributions from capital;

(2) The trustee shall make regular distributions in accordance with the governing trust instrument construed in accordance with the provisions of this Code section;

(3) The term 'income' in the governing trust instrument shall mean an annual unitrust distribution equal to 4 percent of the net fair market value of the trust's assets or the payout percentage ordered under paragraph (1) of subsection (g) of this Code section,

whether such assets would be considered income or principal under other provisions of Article 16 and 17 of this chapter, averaged over the lesser of:

(A) The three preceding years; or

(B) The period during which the trust has been in existence;

(4) The trustee can determine the fair market value of the property in the trust by appraisal or other reasonable method or estimate; and

(5) The fair market value of the trust property shall not include the value of any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more of the current beneficiaries of the trust have or had the right to occupy or have had the right to possess or control, other than in his or her capacity as trustee of the trust, and instead the right of occupancy or the right to possession or control shall be deemed to be the unitrust amount with respect to such residential property.

(e) The trustee may in the trustee's discretion from time to time determine:

(1) The effective date of a conversion to a unitrust;

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases;

(3) The frequency of unitrust distributions during the year;

(4) The effect of other payments from or contributions to the trust on the trust's valuation;

(5) Whether to value the trust's assets annually or more frequently;

(6) What valuation dates to use;

(7) How frequently to value nonliquid assets and whether to estimate their value; and

(8) Any other matters necessary for the proper functioning of the unitrust.

(f)(1) Expenses which would be deducted from income if the trust were not a unitrust shall not be deducted from the unitrust distribution.

(2) The unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

(g) The trustee or, if the trustee declines to do so, a beneficiary may petition the superior court to:

(1) Select a payout percentage different from 4 percent but not lower than 3 percent or higher than 5 percent;

2105 (2) Provide for a distribution of net income, as would be determined if the trust were not  
2106 a unitrust, in excess of the unitrust distribution if such distribution is necessary to  
2107 preserve a tax benefit;  
2108 (3) Average the valuation of the trust's net assets over a period other than three years; or  
2109 (4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under Code  
2110 Section 53-12-361 shall be revived.  
2111 (h) A conversion to a unitrust shall not affect a provision in the governing trust instrument  
2112 directing or authorizing the trustee to distribute principal or authorizing a beneficiary to  
2113 withdraw a portion or all of the principal.  
2114 (i) A trustee shall not convert a trust into a unitrust:  
2115 (1) If payment of the unitrust distribution would change the amount payable to a  
2116 beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;  
2117 (2) If the unitrust distribution would be made from trust funds which are permanently set  
2118 aside for charitable purposes under the governing trust instrument and for which a federal  
2119 charitable, estate, or gift tax deduction has been taken, unless both income and principal  
2120 are so set aside;  
2121 (3) If:  
2122 (A) Possessing or exercising the power to convert would cause an individual to be  
2123 treated as the owner of all or part of the trust for federal income tax purposes; and  
2124 (B) The individual would not be treated as the owner if the trustee did not possess the  
2125 power to convert; or  
2126 (4) If:  
2127 (A) Possessing or exercising the power to convert would cause all or part of the trust  
2128 assets to be subject to federal estate, gift, or generation-skipping transfer tax with  
2129 respect to an individual; and  
2130 (B) The assets would not be subject to federal estate, gift, or generation-skipping  
2131 transfer tax with respect to the individual if the trustee did not possess the power to  
2132 convert.  
2133 (j)(1) If paragraph (3) or (4) of subsection (i) of this Code section applies to a trustee and  
2134 there is more than one trustee, a cotrustee to whom such provision does not apply may  
2135 convert the trust unless the exercise of the power by the remaining trustee is prohibited  
2136 by the governing trust instrument; and  
2137 (2) If paragraph (3) or (4) of subsection (i) of this Code section applies to all the trustees,  
2138 the trustees may petition the superior court to direct a conversion.  
2139 (k)(1) A trustee may release the power conferred by subsection (a) of this Code section  
2140 to convert to a unitrust if:

2141 (A) The trustee is uncertain about whether possessing or exercising the power to  
2142 convert will cause a result described in paragraph (3) or (4) of subsection (i) of this  
2143 Code section; or  
2144 (B) The trustee determines that possessing or exercising the power to convert will or  
2145 may deprive the trust of a tax benefit or impose a tax burden not described in subsection  
2146 (i) of this Code section.  
2147 (2) The release of the power to convert may be permanent or for a specified period,  
2148 including a period measured by the life of an individual.

2149 53-12-363.

2150 (a) A court shall not change a trustee's decision to exercise or not to exercise a  
2151 discretionary power conferred by Code Section 53-12-361 or 53-12-362 unless it  
2152 determines that the decision was an abuse of the trustee's discretion.

2153 (b) The decisions to which subsection (a) of this Code section apply include:

2154 (1) A determination of whether and to what extent an amount should be transferred from  
2155 principal to income or from income to principal; and  
2156 (2) A determination of the factors that are relevant to the trust and its beneficiaries, the  
2157 extent to which they are relevant, and the weight, if any, to be given to the relevant  
2158 factors in deciding whether and to what extent to exercise the power conferred by Code  
2159 Section 53-12-361 or 53-12-362.

2160 (c) If a court determines that a trustee has abused its discretion regarding a discretionary  
2161 power conferred by Code Section 53-12-361 or 53-12-362, the remedy shall be to restore  
2162 the income and remainder beneficiaries to the positions they would have occupied if the  
2163 trustee had not abused its discretion according to the following rules:

2164 (1) To the extent that the abuse of discretion has resulted in no distribution to a  
2165 beneficiary or a distribution which is too small, the court shall require the trustee to  
2166 distribute from the trust to the beneficiary an amount that the court determines will  
2167 restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;  
2168 (2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary  
2169 which is too large, the court shall restore the beneficiaries, the trust, or both, in whole or  
2170 in part, to their appropriate positions by requiring the trustee to withhold an amount from  
2171 one or more future distributions to the beneficiary who received the distribution that was  
2172 too large or requiring that beneficiary or that beneficiary's estate to return some or all of  
2173 the distribution to the trust, notwithstanding a spendthrift provision or similar provision;  
2174 (3) If the abuse of discretion concerns the power to convert a trust into a unitrust, the  
2175 court shall require the trustee either to convert into a unitrust or to reconvert from a  
2176 unitrust; and



2177 (4) To the extent that the court is unable, after applying paragraphs (1), (2), and (3) of  
2178 this subsection, to restore the beneficiaries, the trust, or both to the positions they would  
2179 have occupied if the trustee had not abused its discretion, the court may require the  
2180 trustee to pay an appropriate amount from its own funds to one or more of the  
2181 beneficiaries, the trust, or both.

2182 (d) No provision of this Code section or Code Section 53-12-361 or 53-12-362 is intended  
2183 to require a trustee to make an adjustment under Code Section 53-12-361 or a conversion  
2184 under Code Section 53-12-362.

2185 53-12-364.

2186 (a) The following provisions shall apply to a trust which by its governing trust instrument  
2187 requires the distribution at least annually of a unitrust amount equal to a fixed percentage  
2188 of not less than 3 percent nor more than 5 percent per year of the net fair market value of  
2189 the trust's assets, valued at least annually, such trust to be referred to as an 'express total  
2190 return unitrust':

2191 (1) The unitrust amount may be determined by reference to the net fair market value of  
2192 the trust's assets in one year or more than one year;

2193 (2) Distribution of such a fixed percentage unitrust amount shall be considered a  
2194 distribution of all of the income of the total return unitrust and shall not be considered a  
2195 fundamental departure from applicable state law, regardless of whether the total return  
2196 unitrust is created and governed by Code Section 53-12-362 or by the provisions of the  
2197 governing trust instrument;

2198 (3) Such a distribution of the fixed percentage of not less than 3 percent nor more than  
2199 5 percent shall be considered a reasonable apportionment of the total return of a total  
2200 return unitrust;

2201 (4) The governing trust instrument may grant discretion to the trustee to adopt a  
2202 consistent practice of treating capital gains as part of the unitrust distribution, to the  
2203 extent that the unitrust distribution exceeds the net accounting income, or it may specify  
2204 the ordering of such classes of income;

2205 (5) Unless the trust provisions specifically provide otherwise, or grant discretion to the  
2206 trustee as set forth in paragraph (4) of this subsection, a distribution of the unitrust  
2207 amount shall be considered to have been made from the following sources in order of  
2208 priority:

2209 (A) From net accounting income determined as if the trust were not a unitrust;

2210 (B) From ordinary income not allocable to net accounting income;

2211 (C) From net realized short-term capital gains;

2212 (D) From net realized long-term capital gains; and

- 2213 (E) From the principal of the trust estate; and  
2214 (6) The trust document may provide that assets used by the trust beneficiary, such as a  
2215 residence property or tangible personal property, may be excluded from the net fair  
2216 market value for computing the unitrust amount. Such use may be considered equivalent  
2217 to the income or unitrust amount.  
2218 (b) A trust which provides for a fixed percentage payout in excess of 5 percent per year  
2219 shall be considered to have paid out all of the income of the total return unitrust and to have  
2220 paid out principal of such trust to the extent that the fixed percentage payout exceeds 5  
2221 percent per year.  
2222 (c) This Code section shall be effective for trusts established and wills executed on or after  
2223 July 1, 2010.

2224 ARTICLE 17

2225 Part 1

2226 53-12-380.

2227 This article shall be known and may be cited as the 'Georgia Principal and Income Act.'

2228 53-12-381.

2229 As used in this article, the term:

2230 (1) 'Accounting period' means a calendar year unless another 12 month period is selected  
2231 by a fiduciary. Such term includes a portion of a calendar year or other 12 month period  
2232 that begins when an income interest begins or ends when an income interest ends.

2233 (2) 'Beneficiary' includes, in the case of a decedent's estate, an heir and devisee and, in  
2234 the case of a trust, an income beneficiary and a remainder beneficiary.

2235 (3) 'Fiduciary' means a personal representative or a trustee. Such term includes an  
2236 executor, administrator, successor personal representative, special administrator, and a  
2237 person performing substantially the same function.

2238 (4) 'Income' means money or property that a fiduciary receives as current return from a  
2239 principal asset. Such term includes a portion of receipts from a sale, exchange, or  
2240 liquidation of a principal asset, to the extent provided in Part 4 of this article.

2241 (5) 'Income beneficiary' means a person to whom net income of a trust is or may be  
2242 payable.

2243 (6) 'Income interest' means the right of an income beneficiary to receive all or part of net  
2244 income, whether the trust provisions require it to be distributed or authorize it to be  
2245 distributed in the trustee's discretion.

- 2246 (7) 'Mandatory income interest' means the right of an income beneficiary to receive net  
2247 income that the trust provisions require the fiduciary to distribute.
- 2248 (8) 'Net income' means the total receipts allocated to income during an accounting period  
2249 minus the disbursements made from income during the period, plus or minus transfers  
2250 under this article to or from income during the period.
- 2251 (9) 'Person' means an individual, corporation, business trust, estate, trust, partnership,  
2252 limited liability company, association, joint venture, or government; a governmental  
2253 subdivision, agency, or instrumentality; a public corporation; or any other legal or  
2254 commercial entity.
- 2255 (10) 'Principal' means property held in trust for distribution to a remainder beneficiary  
2256 when the trust terminates.
- 2257 (11) 'Terms of the trust' means the manifestation of the intent of a settlor or decedent  
2258 with respect to the trust, expressed in a manner that admits of its proof in a judicial  
2259 proceeding.
- 2260 (12) 'Trustee' includes an original, additional, or successor trustee, whether or not  
2261 appointed or confirmed by a court.

2262 Part 2

2263 53-12-390.

- 2264 (a) If a beneficiary is to receive a pecuniary amount outright from a trust after an income  
2265 interest ends, and no interest is provided for by the terms of the trust, the pecuniary amount  
2266 usually bears interest at the legal rate after the expiration of 12 months from the date the  
2267 income interest terminates.
- 2268 (b) The general rule in subsection (a) of this Code section shall be subservient to the equity  
2269 and necessity of a particular case.

2270 53-12-391.

- 2271 Expenses incurred in connection with the settlement of a decedent's estate or the winding  
2272 up of a terminating income interest, including interest and penalties concerning taxes, fees  
2273 of attorneys and personal representatives and trustees, and court costs, may be charged  
2274 against the principal or income in the discretion of the personal representative or trustee.

Part 3

53-12-400.

(a) An income beneficiary shall be entitled to net income from the date on which the income interest begins. An income interest shall begin on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset shall become subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of such individual's death.

(c) An asset shall become subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this Code section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest shall end on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

53-12-401.

(a) A trustee shall allocate an income receipt or disbursement to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal, and the balance shall be allocated to income.

(c) An item of income or an obligation shall be due on the date the payer is required to make a payment. If a payment date is not stated, there shall be no due date for the purposes of this Code section. Distributions to shareholders or other owners from an entity to which Code Section 53-12-410 applies shall be deemed to be due on the date fixed by the entity

2310 for determining who is entitled to receive the distribution or, if no date is fixed, on the  
2311 declaration date for the distribution. A due date shall be periodic for receipts or  
2312 disbursements that have to be paid at regular intervals under a lease or an obligation to pay  
2313 interest or if an entity customarily makes distributions at regular intervals.

2314 53-12-402.

2315 (a) As used in this Code section, the term 'undistributed income' means net income  
2316 received before the date on which an income interest ends. Such term shall not include an  
2317 item of income or expense that is due or accrued or net income that has been added or is  
2318 required to be added to principal under the terms of the trust.

2319 (b) When a mandatory income interest ends, the trustee shall pay to a mandatory income  
2320 beneficiary who survives that date, or the estate of a deceased mandatory income  
2321 beneficiary whose death causes the interest to end, the beneficiary's share of the  
2322 undistributed income that is not disposed of under the terms of the trust unless the  
2323 beneficiary has an unqualified power to revoke more than 5 percent of the trust  
2324 immediately before the income interest ends. In the latter case, the undistributed income  
2325 from the portion of the trust that may be revoked shall be added to principal.

2326 (c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the  
2327 trust's assets ends, the trustee shall prorate the final payment if and to the extent required  
2328 by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift,  
2329 estate, or other tax requirements.

2330 Part 4

2331 Subpart 1

2332 53-12-410.

2333 (a) As used in this Code section, the term 'entity' means a corporation, partnership, limited  
2334 liability company, regulated investment company, real estate investment trust, common  
2335 trust fund, or any other organization in which a trustee has an interest other than a trust or  
2336 estate to which Code Section 53-12-411 applies, a business or activity to which Code  
2337 Section 53-12-412 applies, or an asset-backed security to which Code Section 53-12-431  
2338 applies.

2339 (b) Except as otherwise provided in this Code section, a trustee shall allocate to income  
2340 money received from an entity.

2341 (c) A trustee shall allocate the following receipts from an entity to principal:

2342 (1) Property other than money;

2343 (2) Money received in one distribution or a series of related distributions in exchange for  
2344 part or all of a trust's interest in the entity;  
2345 (3) Money received in total or partial liquidation of the entity; and  
2346 (4) Money received from an entity that is a regulated investment company or a real estate  
2347 investment trust if the money distributed is a capital gain dividend for federal income tax  
2348 purposes.

2349 (d) Money shall be received in partial liquidation:  
2350 (1) To the extent that the entity, at or near the time of a distribution, indicates that it is  
2351 a distribution in partial liquidation; or  
2352 (2) If the total amount of money and property received in a distribution or series of  
2353 related distributions is greater than 20 percent of the entity's gross assets, as shown by the  
2354 entity's year-end financial statements immediately preceding the initial receipt.

2355 (e) Money shall not be received in partial liquidation, nor shall it be taken into account  
2356 under paragraph (2) of subsection (d) of this Code section, to the extent that it does not  
2357 exceed the amount of income tax that a trustee or beneficiary must pay on taxable income  
2358 of the entity that distributes the money.

2359 (f) A trustee may rely upon a statement made by an entity about the source or character  
2360 of a distribution if the statement is made at or near the time of distribution by the entity's  
2361 board of directors or other person or group of persons authorized to exercise powers to pay  
2362 money or transfer property comparable to those of a corporation's board of directors.

2363 53-12-411.  
2364 A trustee shall allocate to income an amount received as a distribution of income from a  
2365 trust or an estate in which the trust has an interest other than a purchased interest and shall  
2366 allocate to principal an amount received as a distribution of principal from such trust or  
2367 estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent  
2368 or donor transfers an interest in such trust to a trustee, Code Section 53-12-410 or  
2369 53-12-431 shall apply to a receipt from the trust.

2370 53-12-412.  
2371 (a) If a trustee who conducts a business or other activity determines that it is in the best  
2372 interest of all the beneficiaries to account separately for the business or activity instead of  
2373 accounting for it as part of the trust's general accounting records, the trustee may maintain  
2374 separate accounting records for its transactions, whether or not its assets are segregated  
2375 from other trust assets.

2376 (b) A trustee who accounts separately for a business or other activity may determine the  
2377 extent to which its net cash receipts shall be retained for working capital, the acquisition

2378 or replacement of fixed assets, and other reasonably foreseeable needs of the business or  
2379 activity, and the extent to which the remaining net cash receipts are accounted for as  
2380 principal or income in the trust's general accounting records. If a trustee sells assets of the  
2381 business or other activity, other than in the ordinary course of the business or activity, the  
2382 trustee shall account for the net amount received as principal in the trust's general  
2383 accounting records to the extent the trustee determines that the amount received is no  
2384 longer required in the conduct of the business.

2385 (c) Activities for which a trustee may maintain separate accounting records shall include:

2386 (1) Retail, manufacturing, service, and other traditional business activities;

2387 (2) Farming;

2388 (3) Raising and selling livestock and other animals;

2389 (4) Management of rental properties;

2390 (5) Extraction of minerals and other natural resources;

2391 (6) Timber operations; and

2392 (7) Activities to which Code Section 53-12-430 applies.

2393 Subpart 2

2394 53-12-420.

2395 A trustee shall allocate to principal:

2396 (1) To the extent not allocated to income under this article, assets received from a  
2397 transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating  
2398 income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

2399 (2) Money or other property received from the sale, exchange, liquidation, or change in  
2400 form of a principal asset, including realized profit, subject to the provisions of this article;

2401 (3) Amounts recovered from third parties to reimburse the trust because of disbursements  
2402 described in paragraph (7) of subsection (a) of Code Section 53-12-451 or for other  
2403 reasons to the extent not based on the loss of income;

2404 (4) Proceeds of property taken by eminent domain, but a separate award made for the  
2405 loss of income with respect to an accounting period during which a current income  
2406 beneficiary had a mandatory income interest shall be income;

2407 (5) Net income received in an accounting period during which there is no beneficiary to  
2408 whom a trustee may or must distribute income; and

2409 (6) Other receipts as provided in this article.

2410 53-12-421.

2411 To the extent that a trustee accounts for receipts from rental property pursuant to this Code  
2412 section, the trustee shall allocate to income an amount received as rent of real or personal  
2413 property, including an amount received for cancellation or renewal of a lease. An amount  
2414 received as a refundable deposit, including a security deposit or a deposit that is to be  
2415 applied as rent for future periods, shall be added to principal and held subject to the terms  
2416 of the lease and shall not be available for distribution to a beneficiary until the trustee's  
2417 contractual obligations have been satisfied with respect to such amount.

2418 53-12-422.

2419 (a) An amount received as interest, whether determined at a fixed, variable, or floating  
2420 rate, on an obligation to pay money to the trustee, including an amount received as  
2421 consideration for prepaying principal, shall be allocated to income without any provision  
2422 for amortization of premium.

2423 (b) A trustee shall allocate to principal an amount received from the sale, redemption, or  
2424 other disposition of an obligation to pay money to the trustee more than one year after it  
2425 is purchased or acquired by the trustee, including an obligation whose purchase price or  
2426 value when it is acquired is less than its value at maturity. If the obligation matures within  
2427 one year after it is purchased or acquired by the trustee, an amount received in excess of  
2428 its purchase price or its value when acquired by the trust shall be allocated to income.

2429 (c) This Code section shall not apply to an obligation to which Code Section 53-12-425  
2430 through 53-12-428, 53-12-430, or 53-12-431 applies.

2431 53-12-423.

2432 (a) Except as otherwise provided in subsection (b) of this Code section, a trustee shall  
2433 allocate to principal the proceeds of a life insurance policy or other contract in which the  
2434 trust or its trustee is named as beneficiary, including a contract that insures the trust or its  
2435 trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee  
2436 shall allocate dividends on an insurance policy to income if the premiums on the policy are  
2437 paid from income and to principal if the premiums are paid from principal.

2438 (b) A trustee shall allocate to income proceeds of a contract that insures the trustee against  
2439 loss of occupancy or other use by an income beneficiary, loss of income, or, subject to  
2440 Code Section 53-12-412, loss of profits from a business.

2441 (c) This Code section shall not apply to a contract to which Code Section 53-12-425  
2442 applies.



53-12-424.

If a trustee determines that an allocation between principal and income required by Code Sections 53-12-425 through 53-12-428 or Code Section 53-12-431 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in Code Section 53-12-361 applies to the allocation. Such power may be exercised by a cotrustee in the circumstances described in Code Section 53-12-361 and may be released for the reasons and in the manner described in such Code section. An allocation shall be presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

53-12-425.

(a) As used in this Code section, the term:

(1) 'Payment' means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. Such term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. Such term also includes any payment from a separate fund, regardless of the reason for the payment.

(2) 'Separate fund' includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment shall not be required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

2479 (d) Except as otherwise provided in subsection (e) of this Code section, subsections (f)  
2480 and (g) of this Code section shall apply, and subsections (b) and (c) of this Code section  
2481 shall not apply, in determining the allocation of a payment made from a separate fund to:  
2482 (1) A trust to which an election to qualify for a marital deduction under Section  
2483 2056(b)(7) of the federal Internal Revenue Code of 1986 has been made; or  
2484 (2) A trust that qualifies for the marital deduction under Section 2056(b)(5) of the federal  
2485 Internal Revenue Code of 1986.

2486 (e) Subsections (d), (f), and (g) of this Code section shall not apply if and to the extent that  
2487 the series of payments would, without the application of subsection (d) of this Code  
2488 section, qualify for the marital deduction under Section 2056(b)(7)(C) of the federal  
2489 Internal Revenue Code of 1986.

2490 (f) A trustee shall determine the internal income of each separate fund for the accounting  
2491 period as if the separate fund were a trust subject to this article. Upon request of the  
2492 surviving spouse, the trustee shall demand of the person administering the separate fund  
2493 that this internal income be distributed to the trust. The trustee shall allocate a payment  
2494 from the separate fund to income to the extent of the internal income of the separate fund  
2495 and distribute that amount to the surviving spouse. The trustee shall allocate the balance  
2496 to principal. Upon request of the surviving spouse, the trustee shall allocate principal to  
2497 income to the extent the internal income of the separate fund exceeds payments made from  
2498 the separate fund to the trust during the accounting period.

2499 (g) If a trustee cannot determine the internal income of a separate fund but can determine  
2500 the value of such separate fund, the internal income of such separate fund shall be deemed  
2501 to be equal to 4 percent of the fund's value, according to the most recent statement of value  
2502 preceding the beginning of the accounting period. If the trustee can determine neither the  
2503 internal income of the separate fund nor the fund's value, the internal income of the fund  
2504 shall be deemed to equal the product of the interest rate and the present value of the  
2505 expected future payments, as determined under Section 7520 of the federal Internal  
2506 Revenue Code of 1986 for the month preceding the accounting period for which the  
2507 computation is made.

2508 (h) This Code section shall not apply to payments to which Code Section 53-12-426  
2509 applies.

2510 53-12-426.

2511 (a) As used in this Code section, the term 'liquidating asset' means an asset whose value  
2512 will diminish or terminate because such asset is expected to produce receipts for a period  
2513 of limited duration. Such term includes a leasehold, patent, copyright, royalty right, and  
2514 right to receive payments during a period of more than one year under an arrangement that

2515 does not provide for the payment of interest on the unpaid balance. Such term shall not  
2516 include a payment subject to Code Section 53-12-425, resources subject to Code Section  
2517 53-12-427, timber subject to Code Section 53-12-428, an activity subject to Code Section  
2518 53-12-430, an asset subject to Code Section 53-12-431, or any asset for which the trustee  
2519 establishes a reserve for depreciation under Code Section 53-12-452.

2520 (b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and  
2521 the balance to principal.

2522 53-12-427.

2523 (a) To the extent that a trustee accounts for receipts from an interest in minerals or other  
2524 natural resources pursuant to this Code section, the trustee shall allocate them as follows:

2525 (1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall  
2526 be allocated to income;

2527 (2) If received from a production payment, a receipt shall be allocated to income if and  
2528 to the extent that the agreement creating the production payment provides a factor for  
2529 interest or its equivalent. The balance shall be allocated to principal;

2530 (3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment,  
2531 bonus, or delay rental is more than nominal, 90 percent shall be allocated to principal and  
2532 the balance to income; and

2533 (4) If an amount is received from a working interest or any other interest not provided  
2534 for in paragraph (1), (2), or (3) of this subsection, 90 percent of the net amount received  
2535 shall be allocated to principal and the balance to income.

2536 (b) An amount received on account of an interest in water that is renewable shall be  
2537 allocated to income. If the water is not renewable, 90 percent of the amount shall be  
2538 allocated to principal and the balance to income.

2539 (c) This Code section shall apply whether or not a decedent or donor was extracting  
2540 minerals, water, or other natural resources before the interest became subject to the trust.

2541 (d) If a trust owns an interest in minerals, water, or other natural resources on July 1, 2010,  
2542 the trustee may allocate receipts from the interest as provided in this Code section or in the  
2543 manner used by the trustee before July 1, 2010. If the trust acquires an interest in minerals,  
2544 water, or other natural resources after July 1, 2010, the trustee shall allocate receipts from  
2545 the interest as provided in this Code section.

2546 53-12-428.

2547 (a) To the extent that a trustee accounts for receipts from the sale of timber and related  
2548 products pursuant to this Code section, the trustee shall allocate the net receipts:

2549 (1) To income to the extent that the amount of timber removed from the land does not  
2550 exceed the rate of growth of the timber during the accounting periods in which a  
2551 beneficiary has a mandatory income interest;  
2552 (2) To principal to the extent that the amount of timber removed from the land exceeds  
2553 the rate of growth of the timber or the net receipts are from the sale of standing timber;  
2554 (3) To or between income and principal if the net receipts are from the lease of  
2555 timberland or from a contract to cut timber from land owned by a trust by determining  
2556 the amount of timber removed from the land under the lease or contract and applying the  
2557 rules in paragraphs (1) and (2) of this subsection; or  
2558 (4) To principal to the extent that advance payments, bonuses, and other payments are  
2559 not allocated pursuant to paragraph (1), (2), or (3) of this subsection.  
2560 (b) In determining net receipts to be allocated pursuant to subsection (a) of this Code  
2561 section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.  
2562 (c) This Code section shall apply whether or not a decedent or transferor was harvesting  
2563 timber from the property before it became subject to the trust.  
2564 (d) If a trust owns an interest in timberland on July 1, 2010, the trustee may allocate net  
2565 receipts from the sale of timber and related products as provided in this Code section or in  
2566 the manner used by the trustee before July 1, 2010. If the trust acquires an interest in  
2567 timberland after July 1, 2010, the trustee shall allocate net receipts from the sale of timber  
2568 and related products as provided in this Code section.

2569 53-12-429.

2570 (a) If a marital deduction is allowed for all or part of a trust whose assets consist  
2571 substantially of property that does not provide the spouse with sufficient income from or  
2572 use of the trust assets, and if the amounts that the trustee transfers from principal to income  
2573 under Code Section 53-12-361 and distributes to the spouse from principal pursuant to the  
2574 terms of the trust are insufficient to provide the spouse with the beneficial enjoyment  
2575 required to obtain the marital deduction, the spouse may require the trustee to make  
2576 property productive of income, convert property within a reasonable time, or exercise the  
2577 power conferred by Code Section 53-12-361. The trustee may decide which action or  
2578 combination of actions to take.  
2579 (b) In cases not governed by subsection (a) of this Code section, proceeds from the sale  
2580 or other disposition of an asset shall be principal without regard to the amount of income  
2581 the asset produces during any accounting period.

2582 53-12-430.

2583 (a) As used in this Code section, the term 'derivative' means a contract or financial  
2584 instrument or a combination of contracts and financial instruments which gives a trust the  
2585 right or obligation to participate in some or all changes in the price of a tangible or  
2586 intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other  
2587 market indicator for an asset or a group of assets.

2588 (b) To the extent that a trustee does not account under Code Section 53-12-412 for  
2589 transactions in derivatives, the trustee shall allocate to principal receipts from and  
2590 disbursements made in connection with those transactions.

2591 (c) If a trustee grants an option to buy property from the trust, whether or not the trust  
2592 owns the property when the option is granted, grants an option that permits another person  
2593 to sell property to the trust, or acquires an option to buy property for the trust or an option  
2594 to sell an asset owned by the trust, and the trustee or other owner of the asset is required  
2595 to deliver the asset if the option is exercised, an amount received for granting the option  
2596 shall be allocated to principal. An amount paid to acquire the option shall be paid from  
2597 principal. A gain or loss realized upon the exercise of an option, including an option  
2598 granted to a settlor of the trust for services rendered, shall be allocated to principal.

2599 53-12-431.

2600 (a) As used in this Code section, the term 'asset-backed security' means an asset whose  
2601 value is based upon the right it gives the owner to receive distributions from the proceeds  
2602 of financial assets that provide collateral for the security. Such term includes an asset that  
2603 gives the owner the right to receive from the collateral financial assets only the interest or  
2604 other current return or only the proceeds other than interest or current return. Such term  
2605 shall not include an asset to which Code Section 53-12-410 or 53-12-425 applies.

2606 (b) If a trust receives a payment from interest or other current return and from other  
2607 proceeds of the collateral financial assets, the trustee shall allocate to income the portion  
2608 of the payment which the payer identifies as being from interest or other current return and  
2609 shall allocate the balance of the payment to principal.

2610 (c) If a trust receives one or more payments in exchange for the trust's entire interest in an  
2611 asset-backed security in one accounting period, the trustee shall allocate the payments to  
2612 principal. If a payment is one of a series of payments that will result in the liquidation of  
2613 the trust's interest in the asset-backed security over more than one accounting period, the  
2614 trustee shall allocate 10 percent of the payment to income and the balance to principal.

ARTICLE 1853-12-450.(a) A trustee shall make the following disbursements from income:(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;(2) One-half of all court costs, attorney's fees, and other fees and expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and court costs, attorney's fees, and other fees and expenses of a proceeding or other matter that concerns primarily the income interest; and(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.(b) Any of the above disbursements made in connection with judicial proceedings may be varied by the order of the court.(c) All other disbursements shall be made from principal.53-12-451.(a) A trustee shall make the following disbursements from principal:(1) The remaining one-half of the disbursements described in paragraphs (1) and (2) of subsection (a) of Code Section 53-12-450;(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination and disbursements made to prepare property for sale;(3) Payments on the principal of a trust debt;(4) Court costs, attorney's fees, and other fees and expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;(5) Premiums paid on a policy of insurance not described in Section 501(4) of the federal Internal Revenue Code of 1986, of which the trust is the owner and beneficiary;(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases

2650 of substances, collecting amounts from persons liable or potentially liable for the costs  
2651 of those activities, penalties imposed under environmental laws or regulations and other  
2652 payments made to comply with those laws or regulations, statutory or common law  
2653 claims by third parties, and defending claims based on environmental matters.

2654 (b) Any of the disbursements provided for in subsection (a) of this Code section made in  
2655 connection with judicial proceedings may be varied by the order of the court.

2656 (c) If a principal asset is encumbered with an obligation that requires income from that  
2657 asset to be paid directly to the creditor, the trustee shall transfer from principal to income  
2658 an amount equal to the income paid to the creditor in reduction of the principal balance of  
2659 such obligation.

2660 53-12-452.

2661 (a) As used in this Code section, the term 'depreciation' means a reduction in value due to  
2662 wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life  
2663 of more than one year.

2664 (b) A trustee may transfer to principal a reasonable amount of the net cash receipts from  
2665 a principal asset that is subject to depreciation but shall not transfer any amount for  
2666 depreciation:

2667 (1) Of that portion of real property used or available for use by a beneficiary as a  
2668 residence or of tangible personal property held or made available for the personal use or  
2669 enjoyment of a beneficiary;

2670 (2) During the administration of a decedent's estate; or

2671 (3) Under this Code section if the trustee is accounting under Section 403 of the federal  
2672 Internal Revenue Code of 1986 for the business or activity in which the asset is used.

2673 (c) An amount transferred to principal need not be held as a separate fund.

2674 53-12-453.

2675 Wherever a charge that is properly allocable to income has been made or is expected to be  
2676 made from principal because of the unusually large nature of the charge or otherwise, the  
2677 trustee may transfer an appropriate amount from income to principal in one or more  
2678 accounting periods to reimburse principal or to provide a reserve for future principal  
2679 disbursements.

2680 53-12-454.

2681 (a) A tax required to be paid by a trustee based on receipts allocated to income shall be  
2682 paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid:

(1) From income to the extent that receipts from the entity are allocated only to income;

(2) From principal to the extent that receipts from the entity are allocated only to principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c) of this Code section, the trustee shall adjust income or principal receipts to the extent that its taxes are reduced because it receives a deduction for payments made to a beneficiary.

53-12-455.

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) Elections and decisions, other than those described in subsection (b) of this Code section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income."



**SECTION 2.**

Code Section 7-1-242 of the Official Code of Georgia Annotated, relating to restrictions on corporate fiduciaries, is amended by revising subsections (a) and (c) as follows:

"(a) No corporation, partnership, or other ~~business association~~ entity may lawfully act as a fiduciary in this state except:

(1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;

(2) A trust company;

(3) A national bank or a state bank lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(4) A savings bank or savings and loan association lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(5) Attorneys at law licensed to practice in this state, whether ~~incorporated~~ organized as a professional corporation or otherwise;

(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Chapter 5 of Title 10, provided that this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of Title 53, relating to wills, trusts, and the administration of estates, or Title 29, relating to guardianships and conservatorships; or

(7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities; or

(8) A nonprofit corporation."

"(c) Nothing in this chapter shall be construed to repeal or to change ~~Part 2 of Article 16 of Chapter 12 of Title 53, dealing with foreign trustees, or Part 3 of Article 16 of Chapter 12 of Title 53, dealing with certain foreign corporations acting as fiduciaries, Article 15 of Chapter 12 of Title 53~~ or any other statutes or rules of law on such ~~subjects~~ subject."

**SECTION 3.**

Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is amended by revising Code Section 10-6-142, relating to the statutory form for financial power of attorney, as follows:

"10-6-142.

The Georgia Statutory Form for Financial Power of Attorney shall be substantially as follows:

## 2754 FINANCIAL POWER OF ATTORNEY

2755 County of \_\_\_\_\_

2756 State of Georgia

2757 I, \_\_\_\_\_, (hereinafter 'Principal'), a resident of \_\_\_\_\_ County,  
2758 Georgia, do hereby constitute and appoint \_\_\_\_\_ my true and  
2759 lawful attorney-in-fact (hereinafter 'Agent') for me and give such person the power(s)  
2760 specified below to act in my name, place, and stead in any way which I, myself, could do  
2761 if I were personally present with respect to the following matters:

2762 (Directions: To give the Agent the powers described in paragraphs 1 through 13, place  
2763 your initials on the blank line at the end of each paragraph. If you DO NOT want to  
2764 give a power to the Agent, strike through the paragraph or a line within the paragraph  
2765 and place your initials beside the stricken paragraph or stricken line. The powers  
2766 described in any paragraph not initialed or which has been struck through will not be  
2767 conveyed to the Agent. Both the Principal and the Agent must sign their full names at  
2768 the end of the last paragraph.)

2769 1. Bank and Credit Union Transactions: To make, receive, sign, endorse, execute,  
2770 acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit,  
2771 notes, stock certificates, withdrawal receipts and deposit instruments relating to  
2772 accounts or deposits in, or certificates of deposit of banks, savings and loans, credit  
2773 unions, or other institutions or associations. \_\_\_\_\_

2774 2. Payment Transactions: To pay all sums of money, at any time or times, that may  
2775 hereafter be owing by me upon any account, bill or exchange, check, draft, purchase,  
2776 contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered  
2777 by me or for me in my name, by my Agent. \_\_\_\_\_

2778 Note: If you initial paragraph 3 or paragraph 4 which follow, a notarized signature will  
2779 be required on behalf of the Principal.

2780 3. Real Property Transactions: To lease, sell, mortgage, purchase, exchange, and  
2781 acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and  
2782 acquisition of, and to accept, take, receive, and possess any interest in real property  
2783 whatsoever, on such terms and conditions, and under such covenants, as my Agent shall  
2784 deem proper; and to maintain, repair, tear down, alter, rebuild, improve, manage,  
2785 insure, move, rent, lease, sell, convey, subject to liens, mortgages, and security deeds,  
2786 and in any way or manner deal with all or any part of any interest in real property  
2787 whatsoever, including specifically, but without limitation, real property lying and being  
2788 situate in the State of Georgia, under such terms and conditions, and under such

covenants, as my Agent shall deem proper and may for all deferred payments accept purchase money notes payable to me and secured by mortgages or deeds to secure debt, and may from time to time collect and cancel any of said notes, mortgages, security interests, or deeds to secure debt. \_\_\_\_\_

4. Personal Property Transactions: To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any other security interests in said property which are recognized under the Uniform Commercial Code as adopted at that time under the laws of Georgia or any applicable state, or otherwise hypothecate, and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I own at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as my Agent shall deem proper. \_\_\_\_\_

5. Stock and Bond Transactions: To purchase, sell, exchange, surrender, assign, redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds, or other securities in any business, association, corporation, partnership, or other legal entity, whether private or public, now or hereafter belonging to me. \_\_\_\_\_

6. Safe Deposits: To have free access at any time or times to any safe-deposit box or vault to which I might have access. \_\_\_\_\_

7. Borrowing: To borrow from time to time such sums of money as my Agent may deem proper and execute promissory notes, security deeds or agreements, financing statements, or other security instruments in such form as the lender may request and renew said notes and security instruments from time to time in whole or in part.

\_\_\_\_\_

8. Business Operating Transactions: To conduct, engage in, and otherwise transact the affairs of any and all lawful business ventures of whatever nature or kind that I may now or hereafter be involved in. \_\_\_\_\_

9. Insurance Transactions: To exercise or perform any act, power, duty, right, or obligation, in regard to any contract of life, accident, health, disability, liability, or other type of insurance or any combination of insurance; and to procure new or additional contracts of insurance for me and to designate the beneficiary of same; provided, however, that my Agent cannot designate himself or herself as beneficiary of any such insurance contracts. \_\_\_\_\_

10. Disputes and Proceedings: To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my property, real or personal, or any part thereof, or touching any matter in which I or my property, real or personal, may be in any way concerned. To defend, settle, adjust, make allowances, compound, submit to arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm, corporation, or other legal entity, in such manner and in all respects as my Agent shall deem proper. \_\_\_\_\_

11. Hiring Representatives: To hire accountants, attorneys at law, consultants, clerks, physicians, nurses, agents, servants, workmen, and others and to remove them, and to appoint others in their place, and to pay and allow the persons so employed such salaries, wages, or other remunerations, as my Agent shall deem proper. \_\_\_\_\_

12. Tax, Social Security, and Unemployment: To prepare, to make elections, to execute and to file all tax, social security, unemployment insurance, and informational returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government; to prepare, to execute, and to file all other papers and instruments which the Agent shall think to be desirable or necessary for safeguarding of me against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which I am or may be liable. \_\_\_\_\_

13. Broad Powers: Without, in any way, limiting the foregoing, generally to do, execute, and perform any other act, deed, matter, or thing whatsoever; that should be done, executed, or performed, including, but not limited to, powers conferred by Code Section ~~53-12-232~~ 53-12-261 of the Official Code of Georgia Annotated, or that in the opinion of my Agent; should be done, executed, or performed, for my benefit or the benefit of my property, real or personal, and in my name of every nature and kind whatsoever, as fully and effectually as I could do if personally present. \_\_\_\_\_

14. Effective Date: This document will become effective upon the date of the Principal's signature unless the Principal indicates that it should become effective at a later date by completing the following, which is optional.

The powers conveyed in this document shall not become effective until the following time or upon the occurrence of the following event or contingency:

\_\_\_\_\_  
\_\_\_\_\_

Note: The Principal may choose to designate one or more persons to determine conclusively that the above-specified event or contingency has occurred. Such person

or persons must make a written declaration under penalty of false swearing that such event or contingency has occurred in order to make this document effective. Completion of this provision is optional.

The following person or persons are designated to determine conclusively that the above-specified event or contingency has occurred:

\_\_\_\_\_

\_\_\_\_\_

Signed: \_\_\_\_\_

Principal

\_\_\_\_\_

Agent

It is my desire and intention that this power of attorney shall not be affected by my subsequent disability, incapacity, or mental incompetence. However, I understand that it shall be revoked and the Agent's power canceled in the event a guardian is appointed for my property. As long as no such guardian is appointed, any and all acts done by the Agent pursuant to the powers conveyed herein during any period of my disability, incapacity, or mental incompetence shall have the same force and effect as if I were not disabled, incapacitated, or mentally incompetent.

I may, at any time, revoke this power of attorney, and it shall be canceled by my death. Otherwise, unless a guardian is appointed for my property, this power of attorney shall be deemed to be in full force and effect as to all persons, institutions, and organizations which shall act in reliance thereon prior to the receipt of written revocation thereof signed by me and prior to my death.

I do hereby ratify and confirm all acts whatsoever which my Agent shall do, or cause to be done, in or about the premises, by virtue of this power of attorney.

All parties dealing in good faith with my Agent may fully rely upon the power of and authority of my Agent to act for me on my behalf and in my name, and may accept and rely on agreements and other instruments entered into or executed by the agent pursuant to this power of attorney.

This instrument shall not be effective as a grant of powers to my Agent until my Agent has executed the Acceptance of Appointment appearing at the end of this instrument.

This instrument shall remain effective until revocation by me or my death, whichever occurs first.

Compensation of Agent. (Directions: Initial the line following your choice.)

1. My Agent shall receive no compensation for services rendered. \_\_\_\_\_
2. My Agent shall receive reasonable compensation for services rendered. \_\_\_\_\_

2898 3. My Agent shall receive \$\_\_\_\_\_ for services rendered. \_\_\_\_\_

2899 IN WITNESS WHEREOF, I have hereunto set my hand and seal on this \_\_\_\_\_ day of  
2900 \_\_\_\_\_, \_\_\_\_.

2901 \_\_\_\_\_  
2902 Principal

2903 WITNESSES

2904 \_\_\_\_\_  
2905 \_\_\_\_\_  
2906 Signature and Address

2907 \_\_\_\_\_  
2908 \_\_\_\_\_  
2909 Signature and Address

2910 Note: A notarized signature is not required unless you have initialed paragraph 3 or 4  
2911 regarding property transactions.

2912 I, \_\_\_\_\_, a Notary Public, do hereby certify that  
2913 \_\_\_\_\_ personally appeared before me this date and acknowledged  
2914 the due execution of the foregoing Power of Attorney.

2915 \_\_\_\_\_  
2916 Notary Public

2917 State of Georgia  
2918 County of \_\_\_\_\_

2919 ACCEPTANCE OF APPOINTMENT

2920 I, \_\_\_\_\_ (print name), have read the foregoing Power of Attorney  
2921 and am the person identified therein as Agent for \_\_\_\_\_ (name of  
2922 grantor of power of attorney), the Principal named therein. I hereby acknowledge the  
2923 following:

2924 I owe a duty of loyalty and good faith to the Principal, and must use the powers granted  
2925 to me only for the benefit of the Principal.

2926 I must keep the Principal's funds and other assets separate and apart from my funds and  
2927 other assets and titled in the name of the Principal. I must not transfer title to any of the  
2928 Principal's funds or other assets into my name alone. My name must not be added to  
2929 the title of any funds or other assets of the Principal, unless I am specifically designated  
2930 as Agent for the Principal in the title.

2931 I must protect, conserve, and exercise prudence and caution in my dealings with the  
 2932 Principal's funds and other assets.

2933 I must keep a full and accurate record of my acts, receipts, and disbursements on behalf  
 2934 of the Principal, and be ready to account to the Principal for such acts, receipts, and  
 2935 disbursements at all times. I must provide an annual accounting to the Principal of my  
 2936 acts, receipts, and disbursements, and must furnish an accounting of such acts, receipts,  
 2937 and disbursements to the personal representative of the Principal's estate within 90 days  
 2938 after the date of death of the Principal.

2939 I have read the Compensation of Agent paragraph in the Power of Attorney and agree  
 2940 to abide by it.

2941 I acknowledge my authority to act on behalf of the Principal ceases at the death of the  
 2942 Principal.

2943 I hereby accept the foregoing appointment as Agent for the Principal with full knowledge  
 2944 of the responsibilities imposed on me, and I will faithfully carry out my duties to the best  
 2945 of my ability.

2946 Dated: \_\_\_\_\_, \_\_\_\_.

2947 (Signature) \_\_\_\_\_

2948 (Address) \_\_\_\_\_

2949 Note: A notarized signature is not required unless the Principal initialed paragraph 3 or  
 2950 paragraph 4 regarding property transactions.

2951 I, \_\_\_\_\_, a Notary Public, do hereby certify that  
 2952 \_\_\_\_\_ personally appeared before me this date and acknowledge  
 2953 the due execution of the foregoing Acceptance of Appointment.

2954 \_\_\_\_\_  
 2955 Notary Public"

#### 2956 SECTION 4.

2957 Said title is further amended by revising paragraph (1) of subsection (f) of Code Section  
 2958 10-14-6, relating to irrevocable trust funds, as follows:

2959 "(f)(1) The assets of a trust fund shall be invested and reinvested subject to all the terms,  
 2960 conditions, limitations, and restrictions imposed by the laws of the State of Georgia upon  
 2961 executors and trustees regarding the making and depositing of investments with trust  
 2962 moneys pursuant to Code Sections 53-8-1 through 53-8-4 of the 'Pre-1998 Probate Code,'  
 2963 if applicable, ~~or Code Section 53-8-1 and Code Section 53-12-287 of the 'Revised Probate~~

2964 Code of 1998<sup>+</sup>, or Code Section 53-12-340 of 'The Revised Georgia Trust Code of 2010.'  
2965 Subject to said terms, conditions, limitations, and restrictions, the trustee of the perpetual  
2966 care trust fund shall have full power to hold, purchase, sell, assign, transfer, reinvest, and  
2967 dispose of any of the securities and investments in which any of the assets of said fund  
2968 are invested, including proceeds of investments."

## 2969 SECTION 5.

2970 Title 11 of the Official Code of Georgia Annotated, relating to the Commercial Code, is  
2971 amended by repealing and designating as reserved Code Section 11-8-602, relating to  
2972 repeals, as follows:

2973 "11-8-602.

2974 ~~This Act repeals Article 15 of Chapter 12 of Title 53, known as the 'Uniform Act for~~  
2975 ~~Simplification of Fiduciary Security Transfers,' including Code Section 53-12-320, relating~~  
2976 ~~to the short title; Code Section 53-12-321, relating to definitions; Code Section 53-12-322,~~  
2977 ~~relating to registration in the fiduciary's name, inquiry, and assumption of continued~~  
2978 ~~fiduciary capacity; Code Section 53-12-323, relating to transfer pursuant to assignment by~~  
2979 ~~the fiduciary and authorized assumptions; Code Section 53-12-324, relating to evidence of~~  
2980 ~~appointment or incumbency when the fiduciary is not the registered owner; Code Section~~  
2981 ~~53-12-325, relating to claims adverse to transfer, written notice of claims, notice of~~  
2982 ~~presentation of security for transfer, time for transfer, and liability of corporation or transfer~~  
2983 ~~agency; Code Section 53-12-326, relating to nonliability of corporation and transfer agent;~~  
2984 ~~Code Section 53-12-327, relating to liability of participants in acquisition, disposition,~~  
2985 ~~assignment, or transfer of security; Code Section 53-12-328, relating to the effect of the~~  
2986 ~~article on tax obligations; Code Section 53-12-329, relating to applicability of the law of~~  
2987 ~~the jurisdiction where a corporation was organized and applicability of article; and Code~~  
2988 ~~Section 53-12-330, relating to uniformity of interpretation, and inserts in lieu thereof the~~  
2989 ~~following:~~

## 2990 ARTICLE 15

2991 Reserved."

## 2992 SECTION 6.

2993 Said title is further amended by revising subsection (d) of Code Section 11-9-406, relating  
2994 to discharge of account debtor, as follows:

2995 "(d) *Term restricting assignment generally ineffective.* Except as otherwise provided in  
2996 subsection (e) of this Code section and Code Sections 11-2A-303, 11-9-407, and ~~53-12-28~~  
2997 ~~53-12-80 through 53-12-83~~ and subject to subsection (h) of this Code section, a term in an



2998 agreement between an account debtor and an assignor or in a promissory note ~~is~~ shall be  
 2999 ineffective to the extent that it:

3000 (1) Prohibits, restricts, or requires the consent of the account debtor or person obligated  
 3001 on the promissory note to the assignment or transfer of, or the creation, attachment,  
 3002 perfection, or enforcement of a security interest in, the account, chattel paper, payment  
 3003 intangible, or promissory note; or

3004 (2) Provides that the assignment, transfer, creation, attachment, perfection, or  
 3005 enforcement of the security interest may give rise to a default, breach, right of  
 3006 recoupment, claim, defense, termination, right of termination, or remedy under the  
 3007 account, chattel paper, payment intangible, or promissory note."

# 3008 SECTION 7.

3009 Said title is further amended by revising subsections (a) and (c) of Code Section 11-9-408,  
 3010 relating to restrictions on assignment of promissory notes, health care insurance receivables,  
 3011 and certain intangibles ineffective, as follows:

3012 "(a) *Term restricting assignment generally ineffective.* Except as otherwise provided in  
 3013 subsection (b) of this Code section or in Code Section ~~53-12-28~~ 53-12-80, a term in a  
 3014 promissory note or in an agreement between an account debtor and a debtor which relates  
 3015 to a health care insurance receivable or a general intangible, including a contract, permit,  
 3016 license, or franchise, and which term prohibits, restricts, or requires the consent of the  
 3017 person obligated on the promissory note or the account debtor to the assignment or transfer  
 3018 of, or creation, attachment, or perfection of a security interest in, the promissory note,  
 3019 health care insurance receivable, or general intangible, ~~is~~ shall be ineffective to the extent  
 3020 that the term:

3021 (1) Would impair the creation, attachment, or perfection of a security interest; or

3022 (2) Provides that the assignment, transfer, creation, attachment, or perfection of the  
 3023 security interest may give rise to a default, breach, right of recoupment, claim, defense,  
 3024 termination, right of termination, or remedy under the promissory note, health care  
 3025 insurance receivable, or general intangible."

3026 "(c) *Legal restrictions on assignment generally ineffective.* Except as otherwise provided  
 3027 in Code Section ~~53-12-28~~ 53-12-80, a rule of law, statute, or regulation that prohibits,  
 3028 restricts, or requires the consent of a government, governmental body or official, person  
 3029 obligated on a promissory note, or account debtor to the assignment or transfer of, or  
 3030 creation of a security interest in, a promissory note, health care insurance receivable, or  
 3031 general intangible, including a contract, permit, license, or franchise between an account  
 3032 debtor and a debtor, ~~is~~ shall be ineffective to the extent that the rule of law, statute, or  
 3033 regulation:

3034 (1) Would impair the creation, attachment, or perfection of a security interest; or  
3035 (2) Provides that the assignment, transfer, creation, attachment, or perfection of the  
3036 security interest may give rise to a default, breach, right of recoupment, claim, defense,  
3037 termination, right of termination, or remedy under the promissory note, health care  
3038 insurance receivable, or general intangible."

#### 3039 SECTION 8.

3040 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,  
3041 and associations, is amended by revising paragraph (3) of subsection (a) of Code Section  
3042 14-2-1109, relating to business corporations merger with other entities, as follows:

3043 "(3) 'Joint-stock association' includes any association of the kind commonly known as  
3044 a joint-stock association or joint-stock company and any unincorporated association,  
3045 trust, or enterprise having members or having outstanding shares of stock or other  
3046 evidences of financial and beneficial interest therein, whether formed by agreement or  
3047 under statutory authority or otherwise, but ~~does~~ shall not include a corporation,  
3048 partnership, limited liability partnership, limited liability company, or nonprofit  
3049 organization. A joint-stock association as defined in this paragraph may be one formed  
3050 under the laws of this state, including a trust created pursuant to ~~Article 3~~ Article 2 of  
3051 Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or  
3052 jurisdiction."

#### 3053 SECTION 9.

3054 Said title is further amended by revising paragraph (8) of Code Section 14-2-1110, relating  
3055 to definitions for business corporations, as follows:

3056 "(8) 'Corporation,' in addition to the definition contained in Code Section 14-2-140, shall  
3057 include any trust merging with a domestic corporation pursuant to Code Section ~~53-12-59~~  
3058 53-12-159."

#### 3059 SECTION 10.

3060 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section  
3061 14-3-1108, relating to nonprofit corporations definitions and merger with foreign  
3062 corporations, as follows:

3063 "(3) 'Joint-stock association' includes any association of the kind commonly known as  
3064 a joint-stock association or joint-stock company and any unincorporated association,  
3065 trust, or enterprise having members or having outstanding shares of stock or other  
3066 evidences of financial and beneficial interest therein, whether formed by agreement or  
3067 under statutory authority or otherwise, but ~~does~~ shall not include a corporation,

3068 partnership, limited liability partnership, limited liability company, or nonprofit  
 3069 organization. A joint-stock association as defined in this paragraph may be one formed  
 3070 under the laws of this state, including a trust created pursuant to ~~Article 3~~ Article 2 of  
 3071 Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or  
 3072 jurisdiction."

### 3073 SECTION 11.

3074 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
 3075 paragraph (1) of subsection (c) of Code Section 15-6-77.3, relating to additional fees in  
 3076 counties with populations in unincorporated areas of 350,000 or more, as follows:

3077 "(1) Recording and returning to sender all instruments pertaining to real estate  
 3078 and deeds of trust or amendments thereto, in accordance with Code Section  
 3079 ~~53-12-52~~ 53-12-152, each page. . . . . \$ 5.00"

### 3080 SECTION 12.

3081 Said title is further amended by revising paragraphs (4), (5), (6), and (8) of Code Section  
 3082 15-9-127, relating to additional concurrent jurisdiction with superior courts, as follows:

3083 "(4) Appointment of new trustee to replace trustee pursuant to Code Section ~~53-12-170~~  
 3084 53-12-201;

3085 (5) Acceptance of the resignation of a trustee upon written request of the beneficiaries  
 3086 pursuant to Code Section ~~53-12-175~~ 53-12-220;

3087 (6) Acceptance of resignation of a trustee upon petition of the trustee pursuant to Code  
 3088 Section ~~53-12-175~~ 53-12-220;"

3089 "(8) Conversion to a unitrust and related matters pursuant to Code Section ~~53-12-221~~  
 3090 53-12-362; and"

### 3091 SECTION 13.

3092 Code Section 20-2-64 of the Official Code of Georgia Annotated, relating to establishment  
 3093 and maintenance of trusts or funds, is amended by revising subsection (a), as follows:

3094 "(a) Each local board of education is authorized to establish and maintain one or more  
 3095 funds or trusts for the purposes specified in this Code section and to designate one or more  
 3096 fund managers or trustees thereof. Each local board of education shall be deemed to be a  
 3097 person for the purposes of Chapter 12 of Title 53, known as ~~the 'Georgia Trust Act,'~~ 'The  
 3098 Revised Georgia Trust Code of 2010,' and may take any action which a natural person  
 3099 would be authorized to take and shall be subject to any duty imposed upon a natural person  
 3100 by the provisions of such chapter, except as provided in this Code section."

**SECTION 14.**

Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is amended by revising paragraphs (13) and (14) of Code Section 29-3-32, relating to investment of funds, as follows:

"(13) Farm loan bonds issued by federal land banks or joint-stock land banks under the Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., ~~as authorized by Code Section 53-12-286;~~

(14) Real property loans, ~~as authorized by Code Section 53-12-284:~~

(A) Which are not in default;

(B) Which are secured by mortgages or deeds to secure debt conveying a first security title to improve real property;

(C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701, et seq.; and

(D) With respect to which loans, on or after default, pursuant to such insurance, debentures in at least the full amount of unpaid principal are issuable, which debentures are fully and unconditionally guaranteed both as to principal and interest by the United States; and"

**SECTION 15.**

Said title is further amended by revising paragraphs (13) and (14) of Code Section 29-5-32, relating to investment of estate funds by conservator, as follows:

"(13) Farm loan bonds issued by federal land banks or joint-stock land banks under the Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., ~~as authorized by Code Section 53-12-286;~~

(14) Real property loans, ~~as authorized by Code Section 53-12-284:~~

(A) Which are not in default;

(B) Which are secured by mortgages or deeds to secure debt conveying a first security title to improve real property;

(C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701, et seq.; and

(D) With respect to which loans, on or after default, pursuant to such insurance, debentures in at least the full amount of unpaid principal are issuable, which debentures

3136 are fully and unconditionally guaranteed both as to principal and interest by the United  
3137 States; and"

3138 **SECTION 16.**

3139 Code Section 37-9-8 of the Official Code of Georgia Annotated, relating to the use of assets  
3140 other than income for determination of assessments, is amended by revising subsection (d)  
3141 as follows:

3142 "(d) Nothing in this Code section shall be construed to supersede the provisions of Chapter  
3143 12 of Title 53, ~~the 'Georgia Trust Act.'~~ 'The Revised Georgia Trust Code of 2010.'"

3144 **SECTION 17.**

3145 Code Section 48-13-55 of the Official Code of Georgia Annotated, relating to facility  
3146 operated by charitable trust or functionally related businesses, is amended by revising  
3147 subsection (d) as follows:

3148 "(d) For purposes of this Code section, the term 'charitable trust' means any trust or other  
3149 entity covered by ~~Article 6~~ Article 9 or 10 of Chapter 12 of Title 53. For purposes of this  
3150 Code section, the term 'functionally related business' means a business entity, whether or  
3151 not incorporated, which is owned by such a charitable trust and which constitutes a  
3152 functionally related business within the meaning of Section 4942(j)(4) of the federal  
3153 Internal Revenue Code."

3154 **SECTION 18.**

3155 Code Section 53-7-1 of the Official Code of Georgia Annotated, relating to general powers  
3156 and duties of personal representative, is amended by revising subsection (b) as follows:

3157 "(b) As part of the petition for letters testamentary or letters of administration or by  
3158 separate petition, the beneficiaries of a testate estate or the heirs of an intestate estate may,  
3159 by unanimous consent, authorize but not require the probate court to grant to the personal  
3160 representative any of the powers contained in Code Section ~~53-12-232~~ 53-12-261. With  
3161 respect to any beneficiary or heir who is not sui juris, the consent may be given by the  
3162 guardian. The personal representative of a deceased beneficiary or heir ~~is~~ shall be  
3163 authorized to consent on behalf of that beneficiary or heir. The grant of powers ~~may~~ shall  
3164 only be ordered after publication of a citation and without any objection being filed. The  
3165 citation shall be sufficient if it states generally that the petition requests that powers  
3166 contained in Code Section ~~53-12-232~~ 53-12-261 be granted."

3167 **SECTION 19.**

3168 All laws and parts of laws in conflict with this Act are repealed.